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A MANUAL
OF
NAVAL PRIZE LAW.

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A MANUAL
OF
NAVAL PRIZE LAW.

BY
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BARRISTER-AT-LAW.



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PREFACE.

THIS Book is designed for the use of Officers of Her Majesty's Navy in time of war. The Commander of a belligerent Cruiser often finds himself in a perplexity in dealing with a suspected Vessel. The authorities for his conduct are only too numerous; Admiralty Orders, Royal Proclamations, Orders in Council, Acts of Parliament, Treaties, and, last and not least, the International Law, written and unwritten, of Maritime Warfare. The Commander is no lawyer himself, has no lawyer by his side, and has scarcely even time to reflect. He is distracted by different considerations. There is his duty to prosecute the war to the uttermost against the Enemy and the aiders and abettors of the Enemy: there is his interest too to secure a valuable prize under his eye and within his grasp. On the other hand, there is the risk of a mistake. A false step may cost him something of both fortune and professional position; nay, may even involve his Country in a dispute with another Power. In such an emergency an Officer would welcome a Book which directed him, briefly and clearly, what to do, what not to do. It is this service which this little Volume aspires to render. More it does not attempt. Questions which will ultimately have to be dis-

posed of by the Prize Court, but which do not concern the Officer's duty of the place and hour, are not treated of here. For a like reason argument and illustration by cases, such as are convenient for a lawyer's handbook, are here dispensed with as out of place; and it has been thought enough to give in the shape of foot-notes the reference to the authorities on which the statements in the body of the text are founded. The general form and, so far as possible, the phraseology have been borrowed from the official Instructions furnished by the Admiralty to Commanders of Cruisers engaged in the suppression of the Slave-trade.

The arrangement adopted in this Book is as follows: The First Part, after naming the causes of Detention in general terms, prescribes the course which the Commander of a Cruiser has to follow in exercising the powers of Visit, Search, and Detention over any Vessel, that course being the same in all cases alike, whatever may be the cause of Detention. The Second Part treats in detail of the circumstances which constitute the principal causes of Detention. In the Third Part various miscellaneous subjects are considered.

The author has much pleasure in acknowledging his very great obligations to Dr. TRAVERS TWISS, Q.C., the Admiralty Advocate, and to Mr. H. C. ROTHERY, the Registrar to the Admiralty Court, who revised the proof sheets of this Manual, and made numerous and very valuable suggestions.

INTRODUCTION.

ONE difficulty in drawing up a Manual like the present lies in the fact, that in many respects the law of Maritime War is undergoing a transition. On the one hand, the growth of commerce and civilisation¹ have a uniform tendency to render less tolerable the extreme exercise of what are called belligerent rights, and gradually to introduce modifications. Some belligerent rights have been temporarily waved by Great Britain, others have been conceded to particular Powers by Treaty, and others again have fallen silently into disuse.* And thus it happens

¹ A most marked advance in this direction was exhibited in the late war between Austria and Italy (July 1866). For the first time in Naval Warfare, the Merchant Vessels of the Enemy were spared on both sides. This moderation was secured by special agreement between the two Belligerents, and the result of this agreement, coupled with the rule (prescribed by the Treaty of Paris) of "Free Ship, Free Goods," was that the private property of the Enemy at sea was as completely exempt from hostile capture as private property on land. Neutrals also were favourably considered in the Instructions given to the Commanders of Cruisers. Thus Italian Commanders were directed :

1. Not to treat the Master of a Vessel bound to a Blockaded Port as having legal knowledge of the Blockade until special notice of it had been entered on its papers by one of the Blockading Ships of War.

2. To treat as Contraband only such things as, *without further manipulation*, could serve for immediate Military or Naval Armament.

3. To respect Neutral Convoy. Instead, therefore, of visiting Vessels escorted by a Neutral Ship of War, the Commander of the Italian Cruiser was to limit himself to asking the Commander of the Convoy for a List of the Vessels placed under his protection, and for a declaration that there was no Contraband of War on board of them, on account of or intended for the Enemy. If, nevertheless, the Commander of the Italian Cruiser had reason to suppose that the good faith of the Commander of the Convoy had been imposed upon, he was to communicate his suspicions to the Commander of the Convoy, and leave to him to proceed alone to search the suspected Vessel.

that there are parts of Maritime Law which, though not formally, or not completely, abrogated, are now no longer in force, or which at least it would be difficult to put in force. On the other hand, the material changes of modern times,—such as the adoption of Steam Navigation by the mercantile navies of the world, and the development of the art of warfare on land and sea—on land, by the employment of railways, electric telegraphs, &c.; at sea, by the use of iron and steam in the construction and propulsion of Vessels of War,—require a corresponding increase of vigilance on the part of Belligerents on the High Seas, and inevitably give rise to the claim by them of new rights, which, though covered, equally perhaps with more ancient ones, by the plea of military necessity, have as yet neither received any formal international sanction, nor in practice been strictly defined.

Uncertainty being thus liable to arise from these two sources, it may be convenient to call attention to the principal points in the Law of Maritime Warfare which may be called doubtful, and to the manner in which they are respectively dealt with in this Volume.

In the first place, then, it has been assumed that whatever belligerent rights Great Britain has once deliberately renounced in deference to civilisation, will not again be revived. *Vestigia nulla retrorsum*. The parts of Maritime Law which concern such rights are designedly passed over as practically obsolete. It seemed needless to trouble Naval Officers with an elaborate exposition of duties which in all probability they would never be called upon to discharge.

Enemy's
Goods in
Neutral
Vessels.

Thus the old rule, that Enemy's goods render liable to detention the Vessel that carries them, the enforcement of which used to be one of the chief duties of a Naval Commander, is not to be found in this Manual. The Treaty of Paris (set out in the Appendix, p. 113) is taken as having once for all settled the opposite doctrine that

“Free Ships make free Goods.” It is true that the United States and some minor Powers have not yet acceded to that Treaty; but—not to mention the fact that the United States, as a Neutral Power, have always strenuously insisted upon the doctrine as declared by the Treaty—it may be expected that in future wars the benefits of the doctrine “free Ship, free Goods,” will be extended to those nations who are not parties to the Treaty.

The subject of Licenses is omitted for a similar reason. Formerly no trading between Great Britain and the Enemy was allowed to be carried on in any Vessel whatsoever, except under Special License. In the late Russian war, the British Government resolved to issue no Licenses, but instead to allow trade between Great Britain and the Enemy to be carried on by British subjects as well as by Neutrals, provided it was carried on in Neutral Bottoms. This policy was declared by the Order in Council of the 15th of April 1854 (set out in the Appendix, page 116). The Order expired with the war; but the example will in all probability be followed in future.

Again, the Volume does not deal with the liability of Neutral Vessels to detention on the ground of carrying on the Coasting or Colonial Trade of the Enemy. This liability may be taken to have been silently repealed by the advance of Free Trade. Formerly, in time of war, Neutrals, though at liberty to carry on their usual commerce with the Enemy, were not permitted to carry on his Coasting or Colonial Trade, on the ground that to do so was to assist the Enemy directly in war. This restriction was natural enough in times when during peace each country reserved such trade as the exclusive privilege of its own subjects. For then, if, in time of war, Neutrals were found to be carrying on such privileged trade, the presumption was that the Enemy, finding it impossible, on account of the belligerent cruisers, to carry on the trade any longer for himself under his own flag,

had deputed it to Neutrals to carry it on for him, in fact that he had made a concession only for his own benefit. But now, wherever Free Trade prevails in times of peace, this reasoning no longer holds good ; and the prohibition to Neutrals to carry on the Coasting or Colonial Trade of the Enemy will probably never be revived, even if England were to be engaged in war with any country which had not yet allowed Free Trade to its Colonies, or which still maintained Navigation Laws.

Neutral
Convoy.

The Right of Search of Vessels under Neutral Convoy has always been strenuously insisted upon by Great Britain, and was upheld by Lord Stowell. In the body of the Book, therefore, the law is stated as it stands, that Vessels under Neutral Convoy are not exempt from Search. But considering the feeling with which the exercise of this Belligerent right has always been regarded by Neutrals, it is not impossible that at the outbreak of another Naval War some relaxation in this respect may be introduced.

Mail Steam-
ers and
Mail Bags.

The Right to search Mail Steamers and Mail Bags threatens to become a very great inconvenience to Neutrals, in consequence of the rapid development of Postal and Passenger Services. But to give up the right of searching Mail Steamers and Mail Bags altogether, at all events when they are destined to a hostile port, is a sacrifice which can hardly be expected from Belligerents.¹ In the event of a Naval war, it is probable that Special Instructions will be issued regulating the duties of Commanders in this respect. The subject, accordingly, is not treated of in this Book.

Treaty
Obligations.

The Treaty Obligations of Great Britain, which affect her Belligerent rights, are also omitted, as being more properly the subject of Special Instructions.

Territorial
Waters.

With regard to the definition of Territorial Waters,

¹ See Despatch of Earl Russell to Mr. Stuart, Nov. 20, 1862. Parliamentary Papers, North America, No. 5. 1863.

the three-mile limit was originally fixed so as to comprise all waters within Cannon-shot from the shore. Now, however, cannon are made to carry much further than three miles, and one consequence is that the old rule no longer furnishes to Neutral Territory a security against casual molestation from the maritime engagements of Belligerents. But the old rule has as yet not been changed, and is accordingly adhered to in the present Manual.

The character of Blockade has been much altered by ^{Blockade.} Steam-Navigation. Blockade-runners are no longer lumbering sailing Vessels waiting for wind and weather, but the swiftest steamers, watched, however, and pursued by steam cruisers equally swift and powerful, and armed with the far-reaching tremendous projectiles of modern discovery. It is true that the formal definition of an effectual Blockade remains what it was, namely, that it must be such a Blockade as to render hazardous the going in or coming out of any Vessel from the blockaded port; it is true also that whether to establish an effectual Blockade is now more easy or more difficult than heretofore may yet be a question; nevertheless it is probable that, in order to judge of the effectiveness of a Blockade, a new standard may have to be substituted for the old one, as to what must be the requisite strength of the blockading squadron, and what is the limit to the distance at which that squadron may be stationed from the blockaded port. One practical result of steam locomotion may be anticipated. Purely commercial Blockades will be, if not of rarer occurrence than formerly, at any rate of smaller significance as regards the issue of the war. Only to ports very exceptionally situated (as the ports of the Southern States in the late American war) will the temporary loss of maritime intercourse be a very serious matter, so long as there is left open to them land-communication by railway.

In consequence of the application of mechanical dis- ^{Contraband.}

coveries to the art of war, the list of Contraband has received several additions, *e. g.* machinery for Naval Steam-engines, iron for the construction of Railways, telegraphic materials, and so forth. Again, Steam-navigation has much facilitated the carrying of Contraband. A more stringent scrutiny, therefore, will be required into the real destination of a suspected Vessel. An adventurer carrying Contraband in a swift steamer will not hesitate to adopt for a fictitious destination a port hundreds of miles apart from the port to which he is really bound. What is the intervening distance to him? A delay perhaps of a day or two. Similar considerations weaken the presumption of a Vessel's innocence. Lord Stowell restored a sailing vessel captured whilst ostensibly going to a place separated from a Port of Naval Equipment only by a headland, and laden with a cargo of goods which, if she had been destined to that Port, would unquestionably have been Contraband.¹ A steamer captured under like circumstances could nowadays hardly escape condemnation.

Destination
of Cargo.

Connected with the subject of Contraband is the important question of the mode of ascertaining the destination of Goods on board a Vessel. In this Volume it has been treated as conclusively determined by the destination of the Vessel. This view is clearly to the interest of Neutrals. On the other hand, the interest of the Belligerent, when endeavouring to intercept contraband goods from going to his enemy, is to look beyond the destination of the Vessel to the destination of the Goods.

Practically either view leads to serious difficulties. If the Belligerent is left to carry out his own view, there is no saying when and where a Vessel may not become liable to Detention for carrying Contraband. For instance, in the late war between Spain and Chili, a Bri-

¹ Frau Margaretha, 6 C. Rob. 92, as explained in Zelden Rust. 6 C. Rob. 93.

tish mail steamer plying regularly between Southampton and Havre, and going no further, might, if she carried munitions of war, which were intended to be transhipped at Havre to a vessel bound to a Chilian Port, have been stopped in the British Channel by a Spanish Frigate, and carried off to a Spanish Port. On the other hand, if the Neutral view be established, then, under certain circumstances, a Belligerent might as well give up all attempt to stop Contraband. Of this the late American war was an example. Matamoras, a Neutral Port, was quite close to the Southern Coast blockaded by the Federal Cruisers. Was it permissible for a British Vessel to carry to Matamoras a cargo of Munitions of War destined to be immediately transported thence to a Southern Port? The American Prize Courts pronounced that it was not permissible, and the British Government did not remonstrate, no doubt because in the particular instances which occurred the Vessels captured were practically transports in the service of the Confederates, if not actually destined themselves to run the blockade. Upon the whole it would seem probable that neither will a strong Belligerent submit to the Neutral view, nor a strong Neutral to that of the Belligerent.

Judged by principle the view of the Belligerent seems correct. A Neutral Vessel which forwards munitions of war part of their way to their ultimate destination to one of the Belligerents is really aiding and abetting in the war, and this on the high seas. This view is maintained by Halleck,¹ Duer,² and Historicus,³ and was enforced by the American Courts in the cases of the *Stephen Hart*⁴ and the *Commercen*.⁵ But the decisions of the British Courts, so far as they extend, have been in the opposite direction. The view of the Neutral was supported in the

¹ P. 576.

² Vol. i. p. 630.

³ Additional Letters, p. 43.

⁴ Maritime Law Cases, ii. 73.

⁵ 1 Wheaton's Reports, 388.

cases of the *Hendric and Alida*,¹ and more recently in the case of *Hobbs v. Henning*.² As to this last case, however, it is to be observed that the Judgment of the Court of Common Pleas was only upon the pleadings, and apparently rests on no better authority than that of Ortolan,³ an avowed advocate of Neutral rights on an abstract theory which is indifferent alike to positive decisions and general practice.

Some light is thrown on the point by comparison of similar questions which arise in other subjects. Thus, in Blockade: Supposing a vessel A to carry a cargo in breach of blockade from a blockaded to an open port, and another vessel B to carry on the same cargo from that open port to another open port; is a breach of blockade committed by the vessel B? Or, again, is a breach of blockade committed by a vessel C, which takes a cargo from one open port to another, it being intended that the cargo should be there transshipped to another Vessel D, and so forwarded to a blockaded port in breach of the blockade? These questions are not perhaps very important, because they are not likely to arise except in the case of goods in nature Contraband. There is, it is believed, no decision on the point, except that of the *Stephen Hart*.⁴ All that is settled is, that a breach of Blockade is committed by a Vessel, which, though herself beyond the blockaded line, takes on board her cargo from lighters sent out from within the line of Blockade. It is true that a breach of Blockade is not committed either by a Vessel which, herself beyond the Blockaded line, takes on board goods exported *overland* from the blockaded port, or by a Vessel which carries goods to an open port to be forwarded thence *overland* into a blockaded one: but in each of these

¹ 1 Hay and Marriott Rep. 96.

² 5 New Reports, 406.

³ *Diplomatie de la Mer*, vol. ii. p. 181.

⁴ *Maritime Law Cases*, ii. 73.

cases the Blockaded line is not crossed by the goods: in other words the Blockade has not been broken.

Again, in trading with the Enemy. Formerly, when all trade with the enemy was prohibited, such trade was not permitted even to be carried on circuitously. The doctrine of Continuous Voyages was held. If a Neutral Vessel was really intended to carry a cargo from Great Britain to a hostile port, the Prize Court disregarded any subterfuge of a master who touched at an intermediate neutral port, and there unloaded and reloaded in the hope that he might thereby convert what was really a single continuous voyage ensuring to condemnation into two voyages both innocent, *i.e.* one from a British port to a Neutral port, and the other from the Neutral port to a hostile port. *The William*.¹ Again, British Cargo was condemned in its voyage to a Neutral Port, if it was destined to be transported from the Neutral Port to the Enemy either by land or sea. *Jonge Pieter*.² The converse was never decided; but probably it would have been held that a cargo in course of transport from a Neutral to a British Port was liable to seizure if the cargo had been originally exported to that Neutral Port from the Enemy's Country for the purpose of being sent to this country.³

Lastly, in the case of Despatches destined for the Enemy. On more than one occasion a Neutral Vessel going to a Neutral Port has been condemned, because she carried despatches intended to be forwarded from that port overland to the enemy. But in all these cases there seems to have been fraudulent conduct on the part of the Master.⁴

The above-mentioned points of doubt in the law of Maritime Warfare have been selected for consideration in

¹ 5 C. Rob. 393.

² 4 C. Rob. 79.

³ Duer. i. 569.

⁴ *Constantia*, 6 C. Rob. 461 *n.* *Susan*, 6 C. Rob. 461. *Hope*, 6 C. Rob. 461. *Atalanta*, 6 C. Rob. 440.

this Introduction by virtue of their practical importance to the Commanders of British Cruisers, and because the treatment or the omission of them in the Book itself might seem to call for some explanation. To amplify the list would be easy; but to do so would interfere with the object of the present work.

NAVAL PRIZE LAW.

PART I.

GENERAL DUTIES.

CHAPTER I.

POWERS.

Powers ; when and where to be exercised.

1. THE powers with which the Commander of one of Her Majesty's Cruisers is invested for the purpose of making Lawful Prize in time of war are the powers of Visit, Search, and Detention.

2. These powers may be exercised in any Waters except the Territorial Waters of a Neutral State, over any Merchant Vessel, whatever be her Nationality. The Territorial Waters of a State are the Waters within three miles of any part of her Territory.

3. These powers may not be exercised over any Vessel in the Territorial Waters of a Neutral State.

4. These powers may not be exercised over any Ship belonging to the Public Navy of any Foreign State.

Responsibility for exercise of Powers.

5. In the exercise of these powers great discretion will be required. The war has to be prosecuted with zeal, but at the same time care must be taken not to subject to any vexatious interference the commerce of Great Britain or her allies, or of any other nations not engaged in the war.

6. If a Commander in the exercise of these powers

detain a Vessel without probable cause, or do an act not sanctioned by International law or otherwise unwarrantable, he will incur the displeasure of Her Majesty's Government, and will also be personally liable for damages.

7. The Commander is likewise responsible in damages for the acts of all under his command, whether he himself is present or absent; and this responsibility is not shifted upon his Superior Officer (as the Commander of the Squadron or of the Fleet), unless such Superior Officer be actually present and coöperating, or has issued express orders for the doing of the act in question.¹

8. Even although the Vessel and Cargo be condemned as Lawful Prize, the Captors may be deprived by the Prize Court of all interest in the same, if in relation to the Vessel or her Cargo or Crew they have committed any Offence against the Law of Nations, or against the Naval Prize Act, 1864, or against any Act relating to Naval Discipline, or against any Order in Council or Royal Proclamation, or any Breach of Her Majesty's Instructions relating to Prize, or any Act of Disobedience to the Orders of the Lords of the Admiralty, or to the Command of a Superior Officer.²

9. The Commander should be careful on all occasions to observe strict propriety of conduct towards the Masters and Crews of Vessels with whom, in the exercise of these powers, he may be brought into contact; and should impress the same duty upon the Officers and men under his command.

¹ *Mentor*, 1 C. Rob. 179. *Diligentia*, 1 Dod. 404. *Eleanor*, 2 Wheat. 346. *Actæon*, 2 Dod. 48.

² Naval Prize Act, 1864, Sec. 37.

CHAPTER II.

CAUSES FOR DETENTION.

What Vessels are liable to Detention, what are not.

10. Vessels liable to Detention as Lawful Prize are as follows:

- I. Any Vessel, whatever be her Nationality, on account of any one of the following grounds:
 1. Wilful evasion of Visit. See Section 19-23.
 2. Resistance to Search.
 3. Her Papers. See Chapter IX.
 4. Contraband. See Chapter X.
 5. Breach of Blockade. See Chapter XI.
- II. Enemy Vessels. See Chapter XII.
- III. British or Allied Vessels trading with the enemy. See Chapter XIII.
- IV. Any British Vessel upon Recapture from the Enemy, if she has been set forth or used by the Enemy as a Ship of War. See Section 300.
- V. Any Cartel Vessel committing breach of Cartel. See Chapter XV.

Neutral Commerce with the Enemy.

11. Neutral Vessels are not liable to Detention for carrying on commerce with the Enemy, unless such commerce is either Contraband or in Breach of Blockade.

Free Ship, Free Goods.

12. The fact that Goods on board a Vessel belong to the Enemy is, by itself, no cause for the Detention either of the Vessel or of the Goods.

British Commerce with the Enemy.

13. British Subjects, though they are not permitted to carry on in British Vessels any Commerce with the Enemy, should not be interrupted in carrying on Commerce with the Enemy in Neutral Vessels, provided such Commerce is neither Contraband nor in Breach of Blockade.

CHAPTER III.

VISIT.

Precautions with a view to Joint Capture.

14. As soon as a Vessel is sighted which the Commander suspects may be Lawful Prize of War, he should, with a view to any claims of Joint Capture that may be raised by himself or other Captors, appoint an Officer to observe and note in writing from time to time the following particulars :

1. *At the time the Vessel is sighted.* When and where the Vessel was first sighted : at what distance and in what direction she was from the Ship, and what course the Vessel was pursuing ; whether any other British or Allied Ship-of-War was in sight, and if so, at what distance and in what direction from the Vessel, and what course such Ship was pursuing.
2. *During the continuance of the chase.* Whether any alteration took place in the course of the Vessel ; whether any other British or Allied Ship-of-War came in sight, and if so, when and where, and at what distance and in what direction from the Vessel, and what course such Ship was pursuing, and whether she joined in the chase, and if so, to what extent.
3. *At the Capture.* At what time and place the Vessel was come up with : and
 - α. If the Commander is the Actual Captor, whether any other British or Allied Ship-of-War was in sight at the time, and if so, at what distance and in what direction such Ship-of-War was from the Vessel, and what course such Ship was pursuing.
 - β. If such other British or Allied Cruiser is the Actual Captor, then at what distance and in what direction the Commander's Ship was from the Vessel, and what course his Ship was pursuing.

Visit; when and how to be exercised.

15. The Commander should not exercise the right of Visit over any Vessel that he has reason to believe is not liable to Detention.

16. In exercising the right of Visit, the Commander should be careful to occasion to the Vessel no more delay or deviation from her course than can be avoided, and generally to conduct the Visit in a manner as little vexatious as possible.

17. The Commander may chase, but under no circumstances may fire, under false colours.¹

18. The Commander should not in any case require a Boat to be sent from the Vessel, or any Person or Papers to be brought from her on board his Ship.

19. If the state of the wind and weather permit, the Commander should communicate his intention to Visit by hailing, and then cause his Ship to go ahead of the suspected Vessel, and drop a boat alongside of her.

20. If the state of the wind and weather render such a course impracticable, the Commander should require the Vessel to be brought to. For this purpose he should give warning by firing successively two blank guns, and then, if necessary, a shot across her bows; but before firing, the Commander, if he has chased under false colours or without showing his colours, should be careful to hoist the British Flag and Pendant.

21. If these measures fail to cause the Vessel to bring to, then, but not till then, the Commander will be justified in resorting to coercion.

22. When the Vessel has been brought to, the Commander should send a boat alongside of her.

23. If the Master of the Vessel has wilfully evaded Visit, and attempted to escape, his Vessel should be detained.

24. A second Officer should (if convenient) accompany the Visiting Officer, and should be instructed to observe carefully every thing that occurs during the Visit, in order that, if required, he may be able to give his testimony.

25. The Visiting Officer and the Officer by whom he is accompanied should be in proper Uniform, and the Boat should carry a British Flag.

¹ Peacock, 4 C. Rob. 188.

26. The only persons who should in the first instance go on board the Vessel are the Visiting Officer and the Officer by whom he is accompanied: none of the Crew should be allowed to quit the boat, unless expressly ordered. If found necessary, they should be ordered on board.

27. If the Visiting Officer, upon boarding, is at once satisfied that the Vessel is not liable to Detention, he should immediately quit her.

28. If not so satisfied, he should demand, but with all proper courtesy, to see the Vessel's Papers. In case of refusal, he should insist upon their production; in the last resort he will be justified in adopting coercive measures, but it is important, so far as possible, to avoid any exercise of force.

29. If any attempt is made to resist by violence, the Vessel should be at once detained.

30. The Visiting Officer should be careful to obtain the name of the Vessel correctly. He should not be content with taking it from the mouths of the Master and Crew, but should observe how the name is written in her Papers and painted on her stern and on her boats.

31. If after examining the Vessel's Papers the Visiting Officer is satisfied that she is not liable to Detention, he should immediately quit her.

32. Before quitting the Vessel, the Visiting Officer should ask the Master whether he has any complaint to make of the manner in which the Visit has been conducted, or on any other ground. If the Master makes any complaint, the Visiting Officer should request him to specify the particulars in writing.

33. The Visiting Officer should enter on the Log-book of the Vessel a Memorandum of the Visit; the Memorandum should specify the date and place of the Visit, and the name of Her Majesty's Ship and of the Commander; and the Visiting Officer should sign the Memorandum, adding his rank in the Navy.

34. A similar Memorandum should be made on that document amongst the Vessel's Papers, which may be supposed to determine her Nationality.

35. Immediately on his return to his Ship the Visiting Officer should draw up a statement of his proceedings, whilst the facts are fresh in his memory, specifying whether any complaint was made by the Master or any other person on board the Vessel, and, if so, what the

complaint was. He should also deliver to the Commander any complaint which the Master may have made in writing, and the Commander should thereupon carefully investigate the case, and should lose no time in applying such remedy as circumstances may admit.

36. The Officer who accompanied the Visiting Officer should also draw up in detail and deliver to the Commander a statement of all the facts which he witnessed.

37. The Commander should see that a proper entry of all the necessary particulars is made in the Boarding-book, and also in the Log-book of the Ship. Both the Boarding-book and the Log-book should be signed by the Officers by whom the Visit was made.

38. The Commander should, by the first opportunity, forward a full Report of the Case, together with his own remarks thereon, to the Senior Officer on the Station ; and a Duplicate thereof to the Secretary of the Admiralty.

CHAPTER IV.

SEARCH.

How to be exercised.

39. If, after an examination of the Vessel's Papers, the Visiting Officer is not satisfied that she is not liable to Detention, he should proceed to search her.

40. When the Search has been authorised, the Boat's Crew should be called on board to assist, and, if required, further assistance should be obtained from the Ship.

41. The Visiting Officer will also be justified in making inquiries from the Master and Crew ; but he should abstain from all threats or intimidation.

42. During the Search neither the Master nor any other person should be removed from the Vessel without his own consent.

43. Care should be taken to prevent any irregularity or damage to the Cargo.

44. If in the course of the Search the Visiting Officer is satisfied that the Vessel is not liable to Detention, the Search should be immediately discontinued ; every thing that has been removed should be replaced as quickly and carefully as possible, and the Vessel allowed to pursue her course without delay.

45. If the Visiting Officer finds on board any Ship-Papers relative to another Vessel already captured, but not adjudicated upon, he will take possession of them, and forward them to that Port to which such other Vessel has been sent in for Adjudication.¹

46. Before quitting the Vessel, the Visiting Officer should ask the Master whether he has any complaint to make of the manner in which the Search has been conducted, or on any other ground. If the Master makes any complaint the Visiting Officer should request him to specify the particulars in writing.

47. The Visiting Officer should enter on the Log-book of the Vessel a Memorandum of the Search; the Memorandum should specify the date and place of the Search, and the name of Her Majesty's Ship and of the Commander; and the Visiting Officer should sign the Memorandum, adding his rank in the Navy.

48. A similar Memorandum should be made on that Document amongst the Vessel's Papers, which may be supposed to determine her Nationality.

49. Immediately on his return to his Ship, the Visiting Officer should draw up a statement of his proceedings, whilst the facts are fresh in his memory, specifying whether any complaint was made by the Master or any other person on board the Vessel, and, if so, what the complaint was. He should also deliver to the Commander any Complaint which the Master may have made in writing, and the Commander should thereupon carefully investigate the case, and should lose no time in applying such remedy as circumstances may admit.

50. The Officer who accompanied the Visiting Officer should also draw up in detail and deliver to the Commander a statement of all the facts which he witnessed.

51. The Commander should see that a proper Entry of all the necessary particulars is made in the Boarding-book, and also in the Log-book of the Ship. Both the Boarding-book and the Log-book should be signed by the Officers by whom the Search was made.

52. The Commander should, by the first opportunity, forward a full Report of the Case, together with his own remarks thereon, to the Senior Officer on the Station, and a Duplicate thereof to the Secretary of the Admiralty.

¹ *Romeo*, 6 C. Rob. 351. *Maria*, 1 C. Rob. 340.

CHAPTER V.

DETENTION.

53. If, upon Visit and Search of the Vessel, the Commander has reason to entertain any suspicion, he should give the Master an opportunity of explanation;¹ and if, after such opportunity given, he is satisfied that there is Proper Evidence against her amounting to probable cause for her Detention, he should detain her.

What is Proper Evidence against a Vessel amounting to probable Cause for her Detention.

54. Proper Evidence is such evidence as will be admissible before the Prize Court : viz. (1) facts appearing by inspection, as the character of the Vessel, her Equipment, Cargo, and Crew ; (2) the Papers on board of her ; and (3) the testimony of her Master and Crew. The Commander should remember that no evidence by any of the Captors in their own behalf will, at all events in the first instance, be admitted before the Prize Court.²

55. Evidence against the Vessel amounts to probable cause for her Detention when the circumstances connected with the Vessel and Cargo are such as to afford reasonable ground for belief that the Vessel or Cargo, or both, or part of the Cargo, might prove upon further inquiry to be Lawful Prize; and it is immaterial whether these circumstances arise from the misconduct of the Master or are beyond his control.³

56. The Commander should bear in mind that, if the Court should find that the Vessel has been detained without probable cause,⁴ then, although there has been nothing intentionally vexatious in his conduct,⁵ he will be condemned in costs and damages, even to the extent of making good any losses that have been the result of in-

¹ Anna, 5 C. Rob. 385.

² Fortuna, 1 Dod. 81. Henrich and Maria, 4 C. Rob. 57. Haabet, 6 C. Rob. 54. Glierktigheit, 6 C. Rob. 58 n. Charlotte Caroline, 1 Dod. 192, 199. Aline and Fanny, Spinks, 322.

³ Ostsee, Spinks, 175.

⁴ Nemesis, Edwards, 50. Hoppet, Edwards, 369. Elizabeth, 1 Acton, 13. Ostsee, Spinks, 175.

⁵ Ostsee, Spinks, 175. Leucade, Spinks, 217.

evitable accident to the Vessel and Cargo while in his hands.

57. On the other hand, if the Court comes to the conclusion that there was probable cause for the Detention, then, although the Vessel may be ordered to be restored, the Commander will be held to have been in lawful possession of her, and therefore not answerable for casualties.⁶

Detention upon Second Seizure.

58. Sometimes it happens that the Vessel has been previously seized by another of Her Majesty's Cruisers, and allowed to proceed as not being Lawful Prize: in such case the Commander should use special precaution; but, if he is nevertheless satisfied that there is probable cause for the Detention of the Vessel, he should detain her.⁷

Detention the act of the Commander alone.

59. The Commander of the Cruiser is alone responsible for the Detention of a Vessel, unless the Commander of the Squadron is actually present and coöperating, or himself expressly orders the Detention. The authority therefore for the formal Detention of a Vessel should in all cases proceed from the Commander. But any Officer of inferior rank, who, whilst at a distance from his Commander, falls in with a Vessel, and after Visit and Search, has reason to believe that she is liable to Detention, should hold possession of her till he has communicated with his Commander.

Detention; how to be exercised.

60. As soon as the Commander has come to the determination to detain the Vessel, he should give notice to the Master, and may state to him the ground on which the Detention is made.⁸ The Commander should then without delay secure possession of the Vessel, by sending on board one of his Officers and some of his own Crew. If by reason of rough weather or other circumstances this is impracticable, the Commander should require the Vessel to lower her flag, and to steer according to his orders.⁹

⁶ John, 2 Dod. 336.

⁷ Odessa, Spinks, 210. Mercurius, 1 C. Rob. 80.

⁸ Juffrow Maria Schröder, 3 C. Rob. 153.

⁹ Hercules, 2 Dod. 368. Edward and Mary, 3 C. Rob. 306.

Papers to be secured.

61. Upon obtaining possession of the Vessel, the first duty of the Commander is to secure all the Papers belonging to the Vessel, as well those which are usually denominated "Ship Papers," and which relate only to the Vessel and Cargo, as all other Papers, of whatever description, which may be either delivered up or found on board.

62. The Vessel's Papers, as soon as secured, should be arranged and numbered in consecutive order, care being taken that the enclosures are not separated from their envelopes. The importance of securing all the Vessel's Papers is manifest, inasmuch as the evidence to acquit or condemn the Prize must in the first instance come merely from the Prize herself, namely, from the Papers on board and from the depositions on oath of the principal persons belonging to the Prize.

Papers to be verified by Affidavit.

63. As soon as the Vessel's Papers have been arranged and numbered, an Affidavit should be prepared for their verification. The Affidavit may, in default of directions from the Admiralty, be in Form No. 1, page 70, and should always, if possible, be made by the person who found the Papers, or to whom they were delivered up at the time of the Capture. The Affidavit should then be fair copied on foolscap paper, a broad margin being left at the side, and the whole of the Vessel's Papers, numbered as aforesaid, should then be annexed thereto.

64. If any Papers have been destroyed or thrown overboard, a further separate Affidavit of the fact must be prepared. The Affidavit may, in default of directions from the Admiralty, be in Form No. 2, page 71, and it should, if possible, be made by one of the persons who saw the Papers destroyed or thrown overboard, or who succeeded in saving any of them after they had been thrown overboard. All Papers so saved must be arranged and numbered before the Affidavit is made, and, after it has been made, must be annexed thereto.

65. Again, should any Papers be found concealed in any part of the Vessel, a further separate Affidavit of the fact must be prepared. The Affidavit may, in default of directions from the Admiralty, be in Form

No. 3, page 72, and it should, if possible, be made by the person who discovered the Papers. All Papers so found concealed should be arranged and numbered before the Affidavit is made, and, after it has been made, must be annexed thereto.

66. The Affidavits should, on the first convenient opportunity, be sworn before one of Her Majesty's Consuls or Vice-Consuls abroad, or before some other person duly commissioned to administer Oaths in Prize Matters; but no Naval Officer, although so commissioned, may act as Commissioner or administer oaths in any case in which he himself is personally interested.

Account to be taken of Valuables.

67. The Commander should cause an Account to be taken in writing of all money and valuables found on board the Vessel. It will be convenient that this Account should be taken in duplicate, and duly certified, and one copy given to the Master. In default of directions from the Admiralty, the Certificate may be in Form No. 4, page 73.

If necessary, the Vessel afterwards to be released.

68. If, after the Detention of the Vessel, there should come to the knowledge of the Commander any further facts tending to show that the Vessel has been improperly detained, he should immediately release her, taking care to replace, as far as possible, every thing in its original position.

CHAPTER VI.

SENDING TO PORT OF ADJUDICATION.

69. After Detention, the Commander should as soon as possible send the Vessel and Cargo in for Adjudication.

Ransom only in cases authorised by Order in Council.

70. The Commander is not at liberty, in lieu of sending the Vessel and Cargo in for Adjudication, to take either Ransom or Bail for the same except in such cases as may be provided for by any Order of Her Majesty in Council which may be made in this behalf. If he enter into any Contract or Agreement for a Ransom in Contravention of such Order in Council, he is liable for every such offence to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in her Office of Admiralty, and, on conviction, to be fined at the discretion of the Court any sum not exceeding 500*l*.¹

Penalty for delay in sending in for Adjudication.

71. If the Commander is guilty of unnecessary delay in sending the Vessel and Cargo in for Adjudication, he will, in the event of restoration being decreed, be liable for damages.²

What are Proper Ports of Adjudication.

72. By a Port of Adjudication is meant a Port to which the Vessel and her Cargo are sent in order that they may lie there in safety pending proceedings for Adjudication.

73. The proceedings for Adjudication must in every instance be instituted in a British Prize Court ;³ that is, either the High Court of Admiralty of England, or any Court of Admiralty or Vice-Admiralty, or any other Court exercising Admiralty Jurisdiction in Her Majesty's

¹ Naval Prize Act, 1864, Sec. 45.

² *Gerasimo*, 11 Moore, P.C. 107. *Susanna*, 6 C. Rob. 51. *Peacock*, 4 C. Rob. 190.

³ *Donaldson v. Thompson*, 1 Camp. 428. *Purissima Conception*, 6 C. Rob. 45. *Henrick and Maria*, 4 C. Rob. 43. *Polka*, Spinks, 57. *Comet*, 5 C. Rob. 285. *Kierlighett*, 3 C. Rob. 96. *Falcon*, 6 C. Rob. 197. *Staat Embden*, 1 C. Rob. 27. *Flad Oyen*, 1 C. Rob. 135.

Dominions, for the time being authorised to take cognisance of and judicially proceed in matters of Prize.⁴

74. The Port of Adjudication should, if possible, be a British Port, whether in the United Kingdom or elsewhere in the British Dominions; if not, an Allied Port;⁵ but in the latter case it will be necessary, in order that proceedings for Adjudication may be duly instituted, for the Commander to forward the witnesses, together with the Vessel's Papers and necessary Affidavits, in charge of one of the Officers of his Ship to the nearest British Prize Court.

75. None but a British or an Allied Port can be a proper Port of Adjudication. It is only in cases of necessity hereafter⁶ considered that resort may be had to a Neutral Port.

Port of Adjudication; how to be selected.

76. In selecting from amongst the many Ports which are proper Ports of Adjudication, the Commander should select the one which, upon a consideration of all the circumstances, shall seem the most convenient. He should have regard in the first place to the exigencies of the Public Service, and in the second place to the interests of all parties⁷ concerned — namely, the owners of the Vessel, the owners of the Cargo, and the Captors. These interests require (amongst other things) —

1. That the Port should be capable of giving safe harbourage to the Vessel.⁸
2. That it should be large enough to admit the Vessel without unlivery of her Cargo.⁸
3. That it should offer easy communication with the Prize Court before which the case is to be adjudicated.⁸
4. That it should be as near as possible to the place of Capture.⁹

77. If the Commander, in selecting a Port of Adjudication, unreasonably disregard the interests of the Owners of the Vessel and Cargo, he will be liable for damages.

⁴ Naval Prize Act, 1864, Sec. 3.

⁵ Christopher, 2 C. Rob. 209. Betsy, 2 C. Rob. 210, n.

⁶ Infra, Section 87-101.

⁷ Anna, 5 C. Rob. 385. Hunter, 1 Dod. 482.

⁸ Principe, Edwards, 70. Washington, 6 C. Rob. 276.

⁹ Anna, 5 C. Rob. 385. Catharina Elizabeth, 1 Acton 309. Maryland, cited 1 Acton 310. Peacock, 4 C. Rob. 190. Hunter, 1 Dodson 482. Wilhelmsberg, 5 C. Rob. 143.

Provision for Navigation of the Vessel.

78. Having selected the Port of Adjudication, the Commander should appoint a Prize Officer to take charge of the Vessel.

79. The Commander should invite the Master and Crew of the Vessel to assist in navigating her to the Port of Adjudication under the orders of the Prize Officer;¹⁰ but if they refuse, he will not be justified in coercing them.¹¹

80. He should place under the command of the Prize Officer a Prize Crew, sufficient for the safe conduct of the Vessel, regard being had to her size and character and condition, the length and nature of the voyage, the number of her crew, their disposition to co-operate or resist, and all other circumstances of the case.¹²

What is to be sent with the Vessel.

81. If possible, the Vessel should be sent in to the Port of Adjudication in the same condition as when she was taken, with her Master, Crew, and all her Cargo on board.¹³ Sometimes, however, it is impracticable for the Commander wholly to fulfil this Requisition. His duty in such case is prescribed below. Sect. 84 to 101.

82. The Affidavits and Vessel's Papers must be forwarded in the Vessel to the Port of Adjudication. If the Affidavits have not been sworn at the time when the Vessel is despatched for the Port of Adjudication, it will be necessary that some person should be sent with her to whose charge the Papers should be intrusted, and who will be able, upon the arrival of the Vessel at the Port of Adjudication, to make the Affidavits verifying the Papers, and to depose (if required) as to all the circumstances of the Capture. If the Affidavits have been duly sworn before the Vessel is sent in for Adjudication, they should, together with the Vessel's Papers annexed thereto, be enclosed in an envelope securely sealed up and addressed to the Registrar of the Court before which the case is to be adjudicated, and should be given to the Prize Officer

¹⁰ Resolution, 6 C. Rob. 21.

¹¹ Pennsylvania, 1 Acton 33.

¹² Resolution, 6 C. Rob. 21.

¹³ Speculation, 2 C. Rob. 293. Anna, 5 C. Rob. 373. Flying Fish, 2 Gall. 374.

with directions to deliver the same unopened into the Registry.

Insurance of Prize.

83. The Risk attending the Vessel and Cargo until sold or released by Order of a Court of Admiralty falls upon the Captors. Accordingly it lies with the Commander to insure the Vessel and her Cargo, if he think any insurance advisable.

Duty of Captor, if unable to send in the whole of Crew to Port of Adjudication.

84. If it is impracticable to send the whole of the Crew in the Vessel to the Port of Adjudication, the Commander should at least send three or four of the principal persons to be witnesses, and amongst these should be two of the following officers: viz. the Master, Supercargo, Mate, and Boatswain.

85. The Commander should at the same time draw up an Affidavit, to be made by the Prize Officer, stating what persons have been removed, and what is the cause of their removal. In default of directions from the Admiralty, the Affidavit may be in Form No. 5, page 74.

86. All persons so removed should as soon as possible be forwarded to the Port of Adjudication; and in the meantime should be provided for, either on board ship or on shore, as may be found most convenient.

Duty of Captor, if Cargo is unfit to be sent to Port of Adjudication.

87. If the Cargo appear to be not in a condition to be sent into a proper Port of Adjudication, the Commander should cause a Survey thereof to be made by the Officers of his Ship the best qualified for the duty.

88. The Surveying Officers should report to the Commander in writing; and the Report should be signed by them, and entered on the Log of the Ship.

89. If the Surveying Officers report that the Cargo is not in a condition to be sent into a proper Port of Adjudication, the Commander should cause it to be sold.¹⁴

90. The sale may be made either on the spot or in any

¹⁴ Princessa and La Reine Elizabeth, 2 C. Rob. 31.

Neutral Port where the local authorities may be willing to allow the Sale to take place; and for the purpose of selling the Cargo at a Neutral Port, the Commander may either send the Vessel in the first instance to such Port, or cause the Cargo to be trans-shipped, and so forwarded.

91. Previous to the sale, the Cargo, or such part as is intended to be sold, should be appraised. The Appraisers should be as competent persons as can be obtained, and should be sworn to be impartial, and the Appraisalment should be in writing.

92. The sale should be made by the authority and in the presence of the Prize Officer, and, if possible, by public auction; and the proceeds of the sale should be remitted without delay, in pursuance of any Regulations that may be made for this purpose by Order in Council, or, in the absence of such Regulation, into the Bank of England to the Credit of Her Majesty's Paymaster-General, or into the hands of some Government Accountant; and the Prize Officer should draw up an Affidavit of all the proceedings, and annex to it the Report of the Surveying Officers, the Appraisalment, Account Sales and other documents, and take the same in the Vessel to the Port of Adjudication.

93. In default of directions from the Admiralty, the Affidavit may be in Form No. 6, page 75.

Duty of Captor, if the Vessel is unfit to be sent to a proper Port of Adjudication.

94. If the Vessel appear to be not in a condition to be sent into a proper Port of Adjudication, the Commander should cause a Survey to be made thereof by the Officers of his Ship the best qualified for the duty.

95. The Surveying Officers should report to the Commander in writing; and the Report should be signed by them, and entered on the Log of the Ship.

96. If the Surveying Officers report that the Vessel is not in a condition to be sent into a proper Port of Adjudication, the Commander should, if practicable, take her into the nearest Neutral Port that may be willing to admit her.

97. The Commander, however, must bear in mind that he cannot take the Vessel into a Neutral Port against the will of the Local Authorities; and that under no circum-

stances can proceedings for Adjudication be instituted in a Neutral Country.¹⁵

98. If the Vessel is admitted into a Neutral Port, then, in order that proceedings for Adjudication may be duly instituted, the Commander should forward the witnesses, together with the Vessel's Papers and necessary Affidavits, in charge of one of the Officers of his Ship to the nearest British Prize Court.

99. Amongst the Affidavits must be one, to be made by the Prize Officer, stating the circumstances under which the Vessel was sent to the Neutral Port, and having the Report of the Surveying Officers annexed thereto. In default of directions from the Admiralty, the Affidavit may be in Form No. 7, page 76.

100. In either of the following cases :

(1) If the Surveying Officers report the Vessel not to be in a condition to be sent in to any port for Adjudication ; or,

(2) If the Commander is unable to spare a Prize Crew to navigate the Vessel to a Port of Adjudication,

the Commander should release¹⁶ the Vessel and Cargo without ransom, unless there is clear proof that she belongs to the Enemy.

101. If there is clear proof that the Vessel belongs to the Enemy the Commander should remove her Crew and Papers, and, if possible, her Cargo, and then destroy the Vessel.¹⁷ The Crew and Cargo (if saved) should then be forwarded to a proper Port of Adjudication in charge of a Prize Officer, together with the Vessel's Papers and the necessary Affidavits. Amongst the Affidavits should be one, to be made by the Prize Officer, exhibiting the evidence that the Vessel belonged to the Enemy, and the facts which rendered it impracticable to send her in for Adjudication.

¹⁵ Flad Oyen, 1 C. Rob. 135.

¹⁶ Actæon, 2 Dod. 48. John, 2 Dod. 336. Felicity, 2 Dod. 386.

¹⁷ John, 2 Dod. 336.

CHAPTER VII.

DUTIES OF THE PRIZE OFFICER.

102. Immediately upon going on board, the Prize Officer should draw up an Inventory of the Stores, Furniture, and Cargo of the Vessel, so far as can be ascertained without disturbing the stowage. He should invite the Master to assist him in drawing up this Inventory, and should in all cases deliver a copy thereof signed by himself to the Master. In default of directions from the Admiralty, the Inventory may be in form No. 8, page 77.

103. The Prize Officer should keep a Log of his proceedings from the time he goes on board until his arrival at the Port of Adjudication, and note therein any changes that may take place on the voyage in regard to the Vessel, her Cargo, or Crew.

104. The Prize Officer should endeavour by all proper means to obtain additional information as to the case; and if in the course of the voyage any additional Papers are delivered up, or are thrown overboard and picked up, or are found concealed, the Prize Officer should at once cause them to be arranged, numbered, and annexed to an Affidavit to be prepared in the Form No. 9, 10, or 11, pages 78, 79, 80, according to circumstances. The Affidavit may be sworn during the Voyage, if opportunity occur, or upon the arrival of the Vessel at the Port of Adjudication.

105. The Prize Officer is bound to use the strictest care in navigating the Vessel. If there is any want of care, and loss accrues to the Vessel or her Cargo therefrom, then, in the event of restoration being decreed, the Commander will be personally liable for damages.¹

106. The omission to employ a Pilot, in places where pilotage is usual, is want of care.²

107. The Prize Officer is bound to navigate the Vessel straight to the Port of Adjudication; and if this duty is observed, then (provided that there was probable cause for the original Detention) the Captors are not responsible for mere accidents or after-capture by the Enemy.³

¹ William, 6 C. Rob. 316.

² Der Mohr, 3 C. Rob. 129, 4 C. Rob. 315. William, 6 C. Rob. 316. Nemesis, Edwards 50. Speculation, 2 C. Rob. 293.

³ Carolina, 4 C. Rob. 256. John, 2 Dod. 336.

But if the Vessel is without necessity navigated out of her proper course (as for the purpose of effecting the capture of other Vessels),⁴ and any accident ensues therefrom to the Vessel or Cargo, then, in the event of restoration being decreed, the Commander will be liable for damages.

108. The Prize Officer should take the strictest precautions for the preservation of the Cargo on board the Vessel, and for the prevention of embezzlement or irregularity of any kind: and if it be practicable, he should seal the hatches.

109. If any embezzlement take place, the Commander will be personally liable for damages.⁵

110. The Prize Officer should be upon his guard against any attempt at recapture, but should not subject the Master and Crew of the Vessel to any further restraint than may be necessary;⁶ clear necessity alone will justify him in putting them into irons.⁷

111. If absolutely necessary, but not otherwise, the Prize Officer will be warranted in removing the Master, Crew, or Cargo from the Vessel, and in transferring them to other Vessels; but in all such cases it will be his duty to draw up an Affidavit stating what persons or things are removed, and what is the cause of their removal. In default of directions from the Admiralty, the Affidavit may be in Form No. 12, page 81. The Affidavit may be sworn during the voyage, if opportunity occur, or upon the arrival of the Vessel at the Port of Adjudication. All persons and things that may have been so removed should be forwarded without delay to the Port of Adjudication.

⁴ *Susanna*, 6 C. Rob. 48.

⁵ *Concordia*, 2 C. Rob. 102. *L'Eole*, 6 C. Rob. 220. *Washington*, 6 C. Rob. 275. *Clerk's Praxis*, 163.

⁶ *Dispatch*, 3 C. Rob. 279. *The Lively*, 1 Gall. 315. *Die Fire Damer*, 5 C. Rob. 357.

⁷ *St. Juan Baptista and Purissima Conception*, 5 C. Rob. 35.

CHAPTER VIII.

PROCEEDINGS IN PORT OF ADJUDICATION.

Duties of the Prize Officer as to Customs.

112. Upon the Arrival of the Vessel in Port, if the Port is a Port of the United Kingdom, the Prize Officer must bring to at the proper place of Discharge, and must (under penalty of 100*l.*), when required by any Officer of Customs, deliver an account in writing, under his hand, concerning the Vessel and her Cargo, and give any other information in his power that may be asked of him by such Officer, and must allow any such Officer freely to go on board and search the Vessel, and carry to the Queen's Warehouse any of the Goods on board.¹

Duty as to Vessel, Crew, and Cargo.

113. The Prize Officer should deliver up the Vessel, her Crew and Cargo, forthwith and without bulk broken, into the custody of the Marshal; or in the absence of such Officer, into the custody of the principal Officer of the Customs at the Port.²

Duty as to Proceedings for Adjudication.

114. Upon the arrival of the Vessel in Port, the Prize Officer should at once cause proceedings for Adjudication to be instituted.³ He should diligently watch the cause throughout, and should be careful to show all proper deference to the Court, and to afford it all the assistance in his power.

115. If the Prize Officer fails to cause proceedings for Adjudication to be instituted or prosecuted with effect, the Commander will be personally liable for damages on

¹ Naval Prize Act, 1864, Sec. 48.

² Naval Prize Act, 1864, Sec. 16.

³ *Corier Maritimo*, 1 C. Rob. 287. *St. Juan Baptista and La Purissima Conception*, 5 C. Rob. 35. *Madonna del Burso*, 4 C. Rob. 171. *Peacock*, 4 C. Rob. 185. *Anna Catharina*, 6 C. Rob. 10. *William*, 4 C. Rob. 214. *Huldah*, 3 C. Rob. 235. *Susanna*, 6 C. Rob. 48.

account of the delay; and any Claimant may apply for and obtain against the Captors a Monition returnable within six days from the service thereof, citing them to appear and proceed to Adjudication; and on the return of the Monition the Court may either forthwith proceed to Adjudication or direct further proof to be adduced.⁴

116. For the purpose of proceeding to Adjudication, the Prize Officer should as soon as possible after his arrival at the Port apply to the Queen's Proctor at the Port, for instructions as to the Evidence which he is to produce.

117. The procedure and practice of Prize Courts are (subject to the Provisions of the Naval Prize Act, 1864) regulated by General Orders framed from time to time by the Judicial Committee of the Privy Council with the Judge of the High Court of Admiralty, and approved by Her Majesty in Council.⁵

118. If the Affidavits verifying the Vessel's Papers have not already been sworn, they should be immediately sworn.

119. The Prize Officer should forthwith bring the Affidavits and all the Vessel's Papers into the Registry of the Court.⁶ Any Paper which the Prize Officer has failed to produce in the first instance will not be allowed to be produced at a later stage in the suit, unless the delay is satisfactorily explained to the Court.⁷

120. The Prize Officer should at the same time bring three or four of the principal persons belonging to the Vessel, and who were on board the Vessel⁸ at the time of her Detention, before the Judge of the Court or some person authorised in this behalf, who will examine them on oath on the Standing Interrogatories. Such examination is called the examination *in præparatorio*. A copy of the Interrogatories used in the late Russian war will be found in Form No. 13, page 82.

121. As soon as the Affidavit as to the Vessel's Papers has been filed, a Monition will issue, returnable within twenty days from the service thereof, citing all persons in general to show cause why the Vessel and Cargo should not be condemned. And any person may, either before

⁴ Naval Prize Act, 1864, Sec. 32.

⁵ Naval Prize Act, 1864, Sec. 13.

⁶ Naval Prize Act, 1864, Sec. 17.

⁷ Anna, 1 C. Rob. 331. William and Mary, 4 C. Rob. 381.

⁸ Eliza and Katy, 6 C. Rob. 185. Henrick and Maria, 4 C. Rob. 43, 45, 47. Naval Prize Act, 1864, Sec. 19.

or after the Monition has been taken out, enter a claim to the Vessel or Cargo verified by Affidavit.¹¹

122. After the return of the Monition, and the conclusion of the examination *in præparatorio*, the cause will be set down for hearing. At the hearing the only evidence will be the Vessel's Papers and the Answers of the Master and Crew to the Standing Interrogatories.¹² The Captors will not, in the first instance, be suffered to give evidence, unless under special circumstances.

¹¹ Naval Prize Act, 1864, Sec. 23.

¹² *Aline and Fanny*, 10 Moore, P.C. 501.

PART II.

CAUSES OF DETENTION SEPARATELY CONSIDERED.

CHAPTER IX.

PAPERS.

123. The object of the examination of a Vessel's Papers is not only to learn particulars respecting the Vessel and her Cargo, but also to ascertain whether she is properly furnished with Ship-Papers.

Papers ; when a Justification for the Detention of a Vessel.

124. The Commander should detain any Vessel which carries no Ship-Papers.

125. The Commander should detain any Vessel which carries false or simulated Ship-Papers.¹

126. The Commander should detain any Vessel whose Master or Crew have been guilty of Spoliation of Papers;² that is, have wilfully destroyed or thrown overboard any of her Papers, with a view to deceive Commanders of British or Allied Cruisers.

127. In case of Spoliation of Papers, any excuse by the Master that the Papers destroyed were private papers, not concerning the Vessel or her Cargo, should not be entertained.³

128. The Commander *may* also detain a Vessel on account of her Ship-Papers in any of the following cases :⁴

1. If the most important of her Papers that should be on board are not forthcoming.
2. If the Papers on board are irregular.
3. If the Papers on board are inconsistent either

¹ Sarah, 3 C. Rob. 330.

² Hunter, 1 Dod. 480.

³ Two Brothers, 1 C. Rob. 132.

⁴ Anna, 5 C. Rob. 383. Nostra Signora de Piedade Nova Aurora, 6 C. Rob. 43.

with each other or with the statements of the Master. The Master is to be expected to know the name of the Owner of the Vessel and the general contents of her Papers.

129. No fixed rule can be laid down as to what amount of defectiveness, irregularity, or inconsistency in a Vessel's Ship-Papers will justify her Detention. The Commander must act upon his own discretion according to the circumstances of each case. The absence or irregularity even of the most important Ship-Papers may in some cases be satisfactorily accounted for; and for this reason every opportunity of explanation should be given to the Master. On the other hand, deficiencies slight in themselves become serious if there is any cause for suspecting that they have arisen from simulation, suppression, or spoliation; or if there are any circumstances connected with the Vessel or Cargo leading to the suspicion that the Vessel is not engaged in lawful commerce.

130. In case the Commander of the Cruiser is satisfied that the Vessel is engaged in lawful commerce, no defects, irregularities, or inconsistencies in her Ship-Papers will justify her Detention.

What are Ship-Papers.

131. Every Merchant Vessel should carry on board some Official Voucher for her Nationality, issued by the authorities of the Country to which she belongs. The Official Voucher of a Vessel which belongs to a Country possessing a Register of its Mercantile Marine, is a Certificate of her Registry: in other cases its form varies and passes under different names — "Passport," "Seabrief," &c.

132. This Official Voucher is in all cases conclusive evidence of the Nationality of the Vessel as against the Master, but not in his favour. If, therefore, it turns out that the real Nationality of the Vessel is different from that indicated by the Official Voucher, the Master is debarred from claiming the benefit of such real Nationality, and is also compelled to submit to the disadvantageous consequences of it, if any.⁵

133. The absence of an Official Voucher is a grave

⁵ *Fortuna*, 1 Dodson, 87. *Success*, 1 Dodson, 132. *Neptune*, Spinks, 286.

cause of suspicion, and if unaccounted for, justifies the Detention of the Vessel.⁶

134. The Flag carried by a Merchant Vessel or found on board is not by itself a Criterion of the Nationality of a Vessel.⁷

135. *The Certificate of Registry*

is a document signed by the Registrar of the Port to which the Vessel belongs, and usually specifies (*inter alia*) the name of the Vessel and of the Port to which she belongs: her tonnage, &c.: the name of her master: particulars as to her origin: the names and descriptions of her registered owners.

136. *The Passport*⁸

purports to be a requisition on the part of a Sovereign Power or State to suffer the Vessel to pass freely with her company, passengers, goods, and merchandise without any hindrance, seizure, or molestation, as being owned by citizens or subjects of such state. It usually⁹ contains the name and residence of the Master, the name, description, and destination of the Vessel.

137. *The Sea-letter*,¹⁰ or *Sea-brief*,

is issued by the Civil Authorities of the Port from which the Vessel is fitted out: it is the document which entitles the Master to sail under the Flag and Pass of the Nation to which he belongs: and it also specifies the nature and quantity of the Cargo, its ownership and destination.¹¹

138. *The Charter-party*

is the written contract by which a Vessel is let, in whole or in part; the person hiring being called the Charterer. It is executed by the owner or master and by the charterer. It usually specifies (amongst other things) the name of the Master, the name and description of the Vessel, the port where she was lying at the time of the

⁶ Caroline, Spinks, 252.

⁷ Chitty, 197.

⁸ Twiss, ii. 180.

¹⁰ Twiss, ii. 172 n.

⁹ Twiss, ii. 172 n.

¹¹ Chitty, 197.

Charter, the name and residence of the Charterer, the character of the Cargo to be put on board, the port of loading, the port of delivery, and the freight which is to be paid.

The Charter-party is almost invariably on board a vessel which has been chartered.

139. *The Official Log-book*

is the Log-book which the Master is compelled to keep in the form prescribed by the municipal law of the Country to which the Vessel belongs.

140. *The Ship's Log*

is the log kept by the Master for the information of the owners of the Vessel.

141. *The Builder's Contract*

is to be expected on board a Vessel which has not changed hands since she was built. It is not a necessary document; but it sometimes serves, in the absence of the Pass or Sea-letter or Certificate of Registry, to verify the Nationality of a Vessel.

142. *The Bill of Sale*

is the instrument by which a Vessel is transferred to a purchaser. It should be required wherever a sale of the Vessel is alleged to have been made either during the War or just previous to its commencement, and there is any reason to suspect that the Vessel is liable to Detention, either as an Enemy Vessel or as a British or Allied Vessel trading with the Enemy. (*Vide infra*, sec. 255 and sec. 260.)

143. *Bills of Lading*

usually accompany each lot of goods. A Bill of Lading on board a Vessel is a duplicate of the document given by the Master to the Shipper of goods on occasion of the shipment. It specifies the name of the Shipper, the date and place of the Shipment, the name and destination of the Vessel, the description, quantity, and destination of the goods, and the freight which is to be paid.

144. *The Invoices*

should always accompany the Cargo. They contain the particulars and prices of each parcel of goods, with the amount of the freight, duties, and other charges thereon, and specify the name and address of the Shippers and Consignees.

145. *The Manifest*

is a list of the Vessel's Cargo, containing the mark and number of each separate package, the names of the Shippers and Consignees: a specification of the quantity of the goods contained in each package, as rum, sugar, &c.: and also an account of the freight corresponding with the Bills of Lading. The Manifest is usually signed by the Ship-broker who clears the Vessel out at the Custom-House, and by the Master.

146. *The Clearance*

is the Certificate of the Custom-House authorities of the last port from which the Vessel came, to show that the Custom-duties have been paid. The Clearance specifies the cargo and its destination.

147. *The Muster-Roll*

contains the name, age, quality, place of residence, and place of birth of every person of the Vessel's company.

148. *Shipping Articles*

are the agreement for the hiring of seamen. They should be signed by every seaman on board, and should describe accurately the voyage and the terms for which each seaman ships.¹²

149. *Bill of Health*

is a Certificate that the Vessel comes from a place where no contagious distemper prevails, and that none of her crew at the time of her departure were infected with such distemper.¹³

¹² Parsons, i. 442.

¹³ Chitty, 199.

150. The Ship-Papers on board a Vessel vary according to her Nationality. The following Lists specify what Ship-Papers may usually be expected on board Vessels belonging to the principal Maritime States.

151. *Austria.*

Scontrino Ministeriale (Certificate of Registry).
Patente Sovrana (Royal License).
Giornale di Navigazione (Official Log-book).
Scartafanio giornale di Navigazione quotidiano (Ship's Log-book).

Charter-party, if Vessel is chartered.

Custom-House Clearance.
Manifest of Cargo.
Bills of Lading.

Ruolo dell' Equipaggio (List of Crew).
Bill of Health.

152. *Denmark.*

Royal Passport in Latin, with Translation (available only for the voyage for which it is issued, unless renewed by attestation).

Certificate of Ownership.
Build-brief.
Admeasurement-brief.
Burgher-brief (Certificate that the Master is a Danish subject).

Charter-party (if vessel is chartered).

Custom-House Clearance.
Manifest of Cargo.
Bills of Lading.

Muster-roll.

153. *Finland.*

Materbref (Certificate of Measurement).
Belbref (Certificate of Build).
Journalen (Ship's Log-book).
Charter-party (if Vessel is chartered).

Custom-House Clearance.
Manifest of Cargo.
Bills of Lading.

Folkpass (Crew List).

154. *France.*

L'acte de Francisation (*i.e.* Certificate of Nationality).
Le congé (Sailing License).
Le Journal timbré (Stamped Log-book signed by
Consul on clearance of Vessel).
Le Journal du bord (Ship's Log-book).
National Flag.
Charter-party (if Vessel is chartered).

Custom-House Clearance.
Manifest of Cargo.
Bills of Lading.

Le rôle d'Equipage (List of Crew).
Bill of Health.

155. *Germany.*

Messbrief (Certificate of Measurement).
Beilbrief (Builder's Certificate).
Seepass (Sailing License).
Journal (Ship's Log-book).
Charter-party (if Vessel is chartered).

Custom-House Clearance.
Manifest of Cargo.
Bills of Lading.

Muster-rolle (Muster-roll).

156. *Great Britain.*

Certificate of Registry.
Official Log-book.
Ship's Log-book.
National Flag and Code of Signals.
Code of Signals and numeral Flags.
Charter-party (if Vessel is chartered).

Custom-House Clearance.
 Manifest of Cargo.
 Bills of Lading.

Shipping Articles.
 Muster-roll.
 Bill of Health.

Where a Vessel, not on the Register, becomes at a foreign port the property of persons qualified to be owners of a British Vessel, the British Consular Officer there may grant a Provisional Certificate, to be in force for six months, or until she arrives at some port where there is a British Registrar; and this Certificate is to contain the name of the Vessel, the time and place of her purchase, and the names of her purchasers, the name of her Master, and the best particulars as to her tonnage, build, and description that he is able to obtain.¹⁴ A Pass, with the force of a Certificate within the time and limits mentioned therein, may be granted in the case of a British Vessel before Registry to proceed from any one port or place to any other, both being in her Majesty's Dominions.¹⁵

157. *Holland.*

Meetbrief (Certificate of Tonnage).
 Bijlbrief (Certificate of Ownership).
 Zeebrief (Sailing License).
 Journal (Ship's Log-book).
 National Flag.
 Charter-party (if Vessel is chartered).

Custom-House Clearance.
 Manifest of Cargo.
 Bills of Lading.

Monster-rol (Muster-roll).
 Bill of Health.

158. *Italy.*

Scontrino Ministeriale (Certificate of Registry).
 Patente Sovrana (Royal License).
 Giornale di Navigazione (Official Log-book).

¹⁴ 17 and 18 Vic. c. 104, sec. 54.

¹⁵ 17 and 18 Vic. c. 104, sec. 98.

Scartafanio giornale di Navigazione cotidiano (Ship's Log-book).

Charter-party (if Vessel is chartered).

Custom-House Clearance.

Manifest of Cargo.

Bills of Lading.

Ruolo dell' Equipaggio (List of Crew).

Bill of Health.

159. *Norway.*

Billbrev (Certificate of Build).

Maalebrev (Certificate of Measurement).

Nationalitetsbreviis (Certificate of Nationality).

Journale (Ship's Log-book).

Charter-party (if the Vessel is chartered).

Custom-House Clearance.

Manifest of Cargo.

Bills of Lading.

Muster-roll, or Mandskabsliste, or Volkelist (List of Crew).

Vessels purchased by Norwegian subjects in foreign ports are permitted for two years to sail under a provisional Nationalitetsbreviis and a provisional Muster-roll issued by the Norwegian Consul, and without a Billbrev or Maalebrev.

The King of Norway has also power in time of War to prohibit Norwegian vessels from sailing without Royal Seapasses specially issued.

160. *Russia.*

L'acte de Construction ou d'Acquisition du Navire (Builder's Certificate).

La Patente portant autorisation d'arborer le pavillon Marchand Russe (Certificate of Nationality).

Journal du Capitaine (Ship's Log-book).

Charter-party (if Vessel is chartered).

Manifest of Cargo.
Bills of Lading.

Le Rôle d'équipage (Crew-list).

161. *Spain.*

La Patente real (Royal License).
El Diario de Navigacion (Ship's Log-book).
National Flag.
Charter-party (if Vessel is chartered).

Custom-House Clearance.
Manifest.
Bills of Lading.

El Rol (List of Crew).
Bill of Health.

162. *Sweden.*

A Passport from a Chief Magistrate or Commissioner of Customs.

Bilbref (Builder's Certificate).
Mätebref (Certificate of Measurement).
Fribref (Certificate of Registry).
Journalen (Ship's Log-book).
Charter-party (if the Vessel is chartered).

Custom-House Clearance.
Manifest of Cargo.
Bills of Lading.

Folkpass or Sjomansrulla (Muster-roll).

Vessels purchased by Swedish subjects in foreign ports are permitted, on application to the Royal Board of Commerce at Stockholm, to sail for one year with a provisional Bilbref and Mätebref and Sjomansrulla, and without a Fribref.

163. *United States.*

Certificate of Registry.
Sea-letter, or Certificate of Ownership.
Ship's Log-book.

National Flag.
Charter-party (if the Vessel is chartered).
Manifest of Cargo.
Custom-House Clearance.
Bills of Lading.
Shipping Articles.
Muster-roll.
Bill of Health.

CHAPTER X.

CONTRABAND.

164. A Neutral Vessel is permitted to carry on commerce with any port of the Enemy not being a port actually blockaded, provided such commerce be not Contraband of war.

165. The term Contraband is applied to—

1. Goods.
2. Persons.
3. Despatches.
4. Vessels.

CONTRABAND GOODS.

What are Contraband Goods.

166. In order that Goods on board a Neutral Vessel may be Contraband, two conditions are necessary:

1. The Goods must be fit for purposes of war exclusively or for purposes of war as well as of peace.
2. They must be destined for the use of the Enemy in war.

Corresponding to these conditions, two points will have to be ascertained by the Commander, when he suspects a Vessel to be carrying Contraband, viz.:

1. The character of the Goods on board.
2. The destination of the Vessel, which is conclusive as to the destination of the Goods on board.

167. The character of the Goods will be ascertained by inspection of the Bills of Lading, the Invoices, and the Manifest; by inquiries from the Master and Crew; and, if necessary, by Search of the Vessel.

168. If the quantity of the Goods does not exceed that which may be required for the use of the Vessel and her Crew, then, whatever be their character, the Vessel is not to be detained.¹

Goods Absolutely Contraband.

169. All Goods fit for purposes of war only, and certain other Goods which, though fit also for purposes of peace, are in their nature peculiarly serviceable to the Enemy in war, on board a Vessel which has a hostile² destination, are Absolutely Contraband.

170. The list of Goods Absolutely Contraband comprises:

Arms of all kinds and machinery for manufacturing Arms.

Ammunition and materials for Ammunition, including Lead, Sulphate of Potash, Muriate of Potash (Chloride of Potassium), Chlorate of Potash, and Nitrate of Soda.

Gunpowder and its materials, Saltpetre and Brimstone; also Gun-Cotton.

Military Equipments and Clothing.

Military Stores.

Naval Stores, such as Masts,³ Spars, Rudders, and Ship Timber,⁴ Hemp⁵ and Cordage, Sail-cloth,⁶ Pitch and Tar;⁷ Copper fit for sheathing Vessels;⁸ Marine Engines, and the component parts thereof, including Screw-Propellers, Paddle-Wheels, Cylinders, Cranks, Shafts, Boilers, Tubes for Boilers, Boiler-Plates, and

¹ Richmond, 5 C. Rob. 325.

² As to the mode of determining the destination of the Vessel, see inf. Sec. 175-178.

³ Charlotte, 5 C. Rob. 305. Stadt Embden, 1 C. Rob. 27.

⁴ Twende Brodre, 4 C. Rob. 33.

⁵ Apollo, 4 C. Rob. 161. Evert, 4 C. Rob. 354. Gute Gesellschaft Michael, 4 C. Rob. 94.

⁶ Neptunus, 3 C. Rob. 108.

⁷ Jonge Tobias, 1 C. Rob. 329. Twee Juffrowen, 4 C. Rob. 242. Neptunus, 6 C. Rob. 408.

⁸ Charlotte, 5 C. Rob. 275.

Fire-Bars; Marine Cement, and the materials used in the manufacture thereof, as Blue Lias and Portland Cement; Iron, in any of the following forms—Anchors, Rivet-Iron, Angle-Iron, Round Bars of from $\frac{3}{4}$ to $\frac{5}{8}$ of an inch diameter, Rivets, Strips of Iron, Sheet Plate-Iron exceeding $\frac{1}{4}$ of an inch, and Low Moor and Bowling Plates.

Goods Conditionally Contraband.

171. All Goods fit for purposes of war and peace alike, (not hereinbefore specified as Absolutely Contraband), on board a Vessel which has a hostile destination, are Conditionally Contraband, that is, they are Contraband only in case it may be presumed that they are intended to be used for purposes of war. This presumption arises when such hostile destination of the Vessel is either the Enemy's Fleet at Sea or a hostile Port used exclusively or mainly for Naval or Military Equipment.

172. The list of Goods Conditionally Contraband comprises:

Provisions and Liquors fit for the consumption of Army or Navy.¹²

Money.

Telegraphic Materials, such as Wire, Porous Cups, Platina, Sulphuric Acid, and Zinc.¹³

Materials for the construction of a Railway, as Iron Bars, Sleepers, &c.

Coals.¹⁴

Hay.¹⁵

Horses.

Rosin.¹⁶

Tallow.¹⁷

Timber.¹⁸

173. It is part of the prerogative of the Crown during the war to extend or reduce the lists of Articles to be held

¹² Haabet, 2 C. Rob. 182. Jonge Margaretha, 1 C. Rob. 191. Ranger, 6 C. Rob. 125. Edward, 4 C. Rob. 68.

¹³ See Parliamentary Papers, North America, No. 14, 1863, p. 5.

¹⁴ See Lord Kingsdown's Speech in the House of Lords, May 26, 1861.

¹⁵ Hosack, 45, 6.

¹⁷ Neptunus, 3 C. Rob. 108.

¹⁶ Nostra Signora de Begona, 5 C. Rob. 98.

¹⁸ Twende Brodre, 4 C. Rob. 37.

Absolutely or Conditionally Contraband, subject, however, to any Treaty Engagements binding upon Great Britain.

174. If the Commander is satisfied that the Goods on board the Vessel are fit for purposes of peace exclusively, he should allow the Vessel to proceed on her course.

Destination of Vessel.

175. If any of the Goods are fit for purposes either of War exclusively or of War as well as of Peace, the Commander of the Cruiser should proceed to ascertain the destination of the Vessel. This should be done by inspection of her Charter-party, her Log-book, and other documents; and by inquiries from her Master and Crew.

176. A Vessel's destination should be considered Neutral if both the port to which she is bound and every intermediate port at which she is to call in the course of her voyage be Neutral.

177. A Vessel's destination should be considered Hostile if either the port to which she is bound, or any intermediate port at which she is to call in the course of her voyage, be Hostile, or if in any part of her Voyage she is to go to the Enemy's Fleet at Sea. It frequently happens that a Vessel's destination is expressed in her Papers to be dependent upon contingencies. In such case the destination should be presumed Hostile, if any one of the ports which under any of the contingencies she may be intended to touch at or go to be Hostile; but this presumption may be rebutted by clear proof that the Master has definitively abandoned a Hostile destination, and is pursuing a Neutral one.¹⁹

178. The destination of the Vessel is conclusive as to the destination of the Goods on board. If, therefore, the destination of the Vessel be Hostile, then the destination of the Goods on board should be considered Hostile also, notwithstanding it may appear from the Papers or otherwise that the Goods themselves are not intended for the Hostile port, but are intended either to be forwarded beyond it to an ulterior Neutral destination, or to be deposited at an intermediate Neutral port.²⁰ On the other hand, if the destination of the Vessel be Neutral,

¹⁹ *Imina*, 3 C. Rob. 167. *Trende Sostre*, cited in the *Lisette*, 6 C. Rob. 390 n.

²⁰ *Richmond*, 5 C. Rob. 336. *Trende Sostre*, cited in the *Lisette*, 6 C. Rob. 390 n.

then the destination of the Goods on board should be considered Neutral, notwithstanding it may appear from the Papers or otherwise that the Goods themselves have an ulterior Hostile destination, to be attained by trans-shipment, overland conveyance, or otherwise.

Excuses to be disregarded.

179. It will be no excuse for carrying Contraband that the Master is or pretends to be ignorant of the nature of the Goods on board his Vessel.²¹

180. It will be no excuse that the Master was compelled to carry the Contraband Goods by Duresse of the Enemy.

181. It will be no excuse that permission has been given for the Vessel to trade with the Enemy in innocent articles.²²

182. It will be no excuse that the Vessel is at the same time engaged in carrying Despatches for its own Government.²³

183. The rule, Free Ship, Free Goods, does not sanction the carrying of Contraband.²⁴

184. The character of the Port from which Contraband Goods are shipped, whether British, Allied, Neutral, or Hostile, makes no difference.

Liability of Vessel; when it begins, when it ends.

185. A Vessel which carries Contraband Goods becomes liable to Detention from the moment of quitting port with the Goods on board,²⁵ and continues to be so liable until she has deposited them. After depositing them, the Vessel, in ordinary cases, ceases to be liable; and therefore, as a general rule, a Commander should not detain a Vessel for carrying Contraband Goods unless he finds them actually on board.²⁶ But Simulated Papers are an aggravation of the offence. If, therefore, a Commander meets with a Vessel on her return Voyage, and ascertains that on her outward Voyage she carried Contraband Goods with

²¹ Oster Risoer, 4 C. Rob. 200.

²² Eleonora Wilhelmina, 6 C. Rob. 331.

²³ Drummond, 1 Dod. 103.

²⁴ Asia, 6 C. Rob. 403.

²⁵ Imina, 3 C. Rob. 168. Trende Sostre, cited in the Lisette, 6 C. Rob. 390 n.

²⁶ Imina, 3 C. Rob. 168. Frederick Molke, 1 C. Rob. 87.

Simulated Papers, he should detain her;²⁷ and the fact that the return Cargo has not been purchased by the proceeds of the outward Contraband Cargo makes no difference.²⁸

Contraband Goods not to be removed.

186. The Commander will not be justified in taking out of a Vessel any Contraband Goods he may have found on board, and then allowing the Vessel to proceed; his duty is to detain the Vessel, and send her in for Adjudication, together with the Contraband Goods on board.

Penalty.

187. The Penalty for carrying Contraband Goods is the Confiscation of the Contraband Goods, and also of any interest which the Owner of the Contraband Goods may have in the rest of the Cargo or in the Vessel.²⁹

188. The Vessel which carries Contraband Goods, if not owned by the owner of the Contraband Goods, is not confiscated, but forfeits her freight for the Contraband Goods, and all right to expenses the result of her Detention.³⁰

189. The Penalty for carrying Contraband Goods with Simulated Papers,³¹ or in disregard of express stipulations by Treaty,³² is confiscation not only of the Contraband Goods, but also of the Vessel, and any interest which her Owner has in the rest of the Cargo.

CONTRABAND PERSONS.

What are Contraband Persons.

190. The following Persons on board a Neutral Vessel, which has a hostile³³ Destination, are Contraband:

²⁷ Margaret, 1 Acton, 333. Baltic, 1 Acton, 25. Carrington v. Merchants' Insurance Company, 8 Peters, 521. Rosalie and Betty, 2 C. Rob. 343. Nancy, 3 C. Rob. 122.

²⁸ Margaret, 1 Acton 333.

²⁹ Jonge Tobias, 1 C. Rob. 329. Staadt Embden, 1 C. Rob. 27. Ringende Jacob, 1 C. Rob. 89. Floreat Commecium, 3 C. Rob. 178.

³⁰ Mercurius, 1 C. Rob. 288. Neptunus, 3 C. Rob. 108.

³¹ Richmond, 5 C. Rob. 325. Franklin, 3 C. Rob. 221. Edward, 4 C. Rob. 68. Ranger, 6 C. Rob. 126.

³² Neutralitet, 3 C. Rob. 295.

³³ For the meaning of the term "hostile destination" see supra sec: 176-178.

1. Soldiers or Sailors in the service of the Enemy.⁸⁴
2. Officers, whether Military or Civil, sent out on the public service of the Enemy at the public expense of the Enemy. The number of such Officers is immaterial.⁸⁵

191. Ambassadors from the Enemy to a Neutral State are not Contraband, and their presence on board a Neutral Vessel is no cause for the Detention of the Vessel.

Excuses to be disregarded.

192. It will be no excuse for carrying Contraband Persons that the Master is, or pretends to be, ignorant of their character.⁸⁶

193. It will be no excuse that he was compelled to carry the Contraband Persons by Duresse of the Enemy.

Liability of Vessel ; when it begins, when it ends.

194. A Vessel which carries Contraband Persons becomes liable to Detention from the moment of quitting Port with the Persons on board, and continues to be so liable until she has deposited them. After depositing them the Vessel ceases to be liable.

Contraband Persons not to be removed.

195. The Commander will not be justified in taking out of a Vessel any Contraband Persons he may have found on board, and then allowing the Vessel to proceed ; his duty is to detain the Vessel and send her in for Adjudication, together with the Contraband Persons on board.

Penalty.

196. The Penalty for carrying Contraband Persons is the confiscation of the Vessel, and such part of the Cargo as belongs to her Owner.⁸⁷

⁸⁴ Friendship, 6 C. Rob. 420.

⁸⁶ Orozembo, 6 C. Rob. 430.

⁸⁵ Orozembo, 6 C. Rob. 430.

⁸⁷ Orozembo, 6 C. Rob. 430.

CONTRABAND DESPATCHES.*What are Despaches.*

197. Enemy's Despaches on board a Neutral Vessel which has a hostile destination³⁸ are Contraband.³⁹

198. By the term "Enemy's Despaches" are meant any Official Communications, important or unimportant, between Officers, whether Military or Civil, in the service of the Enemy on the public affairs of their Government.⁴⁰

199. But to this rule there is one exception, namely:

Official communications between the Enemy's home Government and the Enemy's Ambassador or Consul resident in a Neutral State.⁴¹

Such communications are permissible on the presumption that they concern the affairs of the Neutral State, and therefore are of a pacific character.

200. Official communications between the Enemy's Officers and Neutral Foreign Governments are under no circumstances Contraband.⁴²

Excuses to be disregarded.

201. It will be no excuse for carrying Despaches that the Master is or pretends to be ignorant of their character.⁴³

202. It will be no excuse that he was compelled to carry the Despaches by Duresse of the Enemy.

Liability of Vessel; when it begins, when it ends.

203. A Vessel which carries Contraband Despaches becomes liable to Detention from the moment of quitting port with the Despaches on board, and continues to be so liable until she has deposited them. After depositing them the Vessel ceases to be liable.

³⁸ For the meaning of the term "hostile destination" see *supra*, sec. 176-178.

³⁹ *Rapid*, Edwards, 228. *Constantia*, 6 C. Rob. 461 n. *Susan*, 6 C. Rob. 461 n. *Hope*, 6 C. Rob. 463 n.

⁴⁰ *Caroline*, 6 C. Rob. 465. *Atalanta*, 6 C. Rob. 440.

⁴¹ *Caroline*, 6 C. Rob. 461. *Madison*, Edwards, 224.

⁴² *Caroline*, 6 C. Rob. 461.

⁴³ *Susan*, 6 C. Rob. 461 n. *Wolsey*, 311.

Contraband Despatches not to be removed.

204. The Commander will not be justified in taking out of a Vessel any Contraband Despatches he may have found on board, and then allowing the Vessel to proceed; his duty is to detain the Vessel and send her in for Adjudication, together with the Contraband Despatches on board.

Penalty.

205. The Penalty for carrying Contraband Despatches is the Confiscation of the Vessel and such part of the Cargo as belongs to her Owner.⁴⁴

CONTRABAND VESSELS.

206. A Neutral Vessel is itself Contraband, if destined to go to the Enemy and to be used by the Enemy for the purposes of the war.

Neutral Vessel; when to be detained.

207. A Commander should therefore detain as Contraband any Neutral Vessel having a Hostile destination—

1. If she is being actually used as a Transport by the Enemy, whether by Duresse or otherwise.⁴⁵
2. If she is fitted as a Vessel of War, and is going for sale.⁴⁶
3. If she is fitted for purposes of War as well as Commerce, and it appears that she is destined for the Enemy's Government to be used as a Vessel of War.⁴⁷

Liability of Vessel.

208. A Vessel which itself is Contraband is liable to be confiscated, together with such part of the Cargo as belongs to her Owner.⁴⁸

⁴⁴ *Atalanta*, 6 C. Rob. 440. But see *Susan and Hope*, notes to the *Caroline*, 6 C. Rob. 462, 3.

⁴⁵ *Friendship*, 6 C. Rob. 420. *Rebecca*, 2 Acton, 119.

⁴⁶ *Richmond*, 5 C. Rob. 326. *Brutus*, 5 C. Rob. Additional Notes to Appendix, No. 1.

⁴⁷ See the cases of the *Fanny*, the *Neptune*, and the *Raven*, in 5 C. Rob. Additional Notes to Appendix No. 1. *Rebecca*, 2 Acton, 119.

⁴⁸ *Richmond*, 5 C. Rob. 325.

CHAPTER XI.

BLOCKADE.

209. If a Blockade is legally null and void, every capture for breach of the Blockade will be illegal, and the Captors may be held liable for damages.

Blockade ; when null and void.

210. A Blockade is null and void *ab initio* if it includes any port or coast not belonging to the Enemy.¹

211. A Blockade becomes null and void if it is not effectually² maintained, and it will be held not to be effectually maintained if the blockading force—

1. Abandon its position, unless the abandonment be merely temporary on account of stress of weather;³ or
2. Be driven away by the superior force of the Enemy;⁴ or
3. Be inadequate to guard the whole line of Blockade, so as to render hazardous the attempt of any Vessel either to go out or to go in;⁵ or
4. Be negligent in its duties;⁶ or
5. Be partial in the execution of its duties towards individual ships or towards one nation more than another.⁷

Extent.

212. A Blockade may be instituted of one port, or of several ports, or of the whole sea-board of the Enemy,

¹ *Franciska*, Spinks, 117.

² *Treaty of Paris*, App. p. 113.

³ *Nancy*, 1 *Acton*, 57. *Columbia*, 1 *C. Rob.* 154.

⁴ *Hoffnung*, 6 *C. Rob.* 112. *Triheten*, 6 *C. Rob.* 65.

⁵ *Betsy*, 1 *C. Rob.* 93.

⁶ *Juffrow Maria Schroeder*, 3 *C. Rob.* 152.

⁷ *Success*, 1 *Dod.* 135. *Fox*, *Edwards*, 320. *Rolla*, 6 *C. Rob.* 372. *Franciska*, Spinks, 292.

there being no limit, so long as the whole coast lying between the extremities of the Blockaded line belong to the Enemy exclusively, and be effectually blockaded.⁸

213. A Blockade is generally instituted to prevent both ingress and egress: but it may be instituted to prevent ingress only or egress only.⁹

214. When the Commander of a Squadron is authorised to institute a Blockade, he will first so dispose the Squadron as to render the Blockade effectual.

Notification.

215. The Commander of the Squadron will then take proper steps in order that a valid Notification of the Blockade may be duly made to foreign States.

216. Notification of a Blockade to a foreign State is an official announcement of the institution of the Blockade made to that foreign State, either by the British Home Authorities or by the Resident British Minister.

217. Any Notification which declares under Blockade a larger extent of coast than is actually¹⁰ blockaded, or that a Blockade is *about*¹¹ to be instituted, is null and void.

218. A valid Notification duly made to a foreign State operates as a Notice of the Blockade to all the subjects or citizens of that State, after the lapse of a sufficient time for its communication to them by their Municipal Authorities.

219. In order that the Notification of the Blockade may be duly made, the Commander of the Squadron should draw up a Declaration specifying—

1. What are the Ports or what is the line of seaboard under Blockade.
2. Upon what day the Blockade was instituted.

The Declaration may be in Form No. 14, p. 89.

220. The Commander of the Squadron should forthwith transmit to the Secretary of the Admiralty a Copy of this Declaration.

221. He should also send Copies to British Ministers resident in foreign States neighbouring to the scene of

⁸ *Franciska*, Spinks, 117. *Naylor v. Taylor*, Moo. and M. 207.

⁹ *Gerasimo*, 11 Moore P.C. 115.

¹⁰ *Henrick and Maria*, 1 C. Rob. 146. *Franciska*, Spinks, 299.

¹¹ *Franciska*, Spinks, 302.

the Blockade, together with a letter desiring Notification to be made. The letter may be in Form No. 15, page 90.

222. In addition the Commander of the Squadron should communicate his Declaration to the Consuls of all the States, Neutral as well as Belligerent, residing at any Neutral Port near to the Blockade, and also (if it can be conveniently done) under a flag of truce, to the Authorities of the Blockaded Ports; and generally he should use all means in his power to make the fact of the Blockade every where known.

Commencement of Blockade.

223. A Blockade legally commences as soon as it is effectual, whether Notification has been made or not.

224. A Blockade, until it has been notified, is called a Blockade *de facto*.

225. As soon as the Blockade has commenced it is to be rigorously enforced against all Vessels alike, and any partiality shown to British or other Vessels may endanger the validity of the Blockade. Sometimes, however, it happens that a Commander seizes several Vessels at once for Breach of the Blockade, and finds himself unable to detain them all. In such case, for him to release some and detain the rest is not an improper act of partiality; nor is it a relaxation of the Blockade, provided he does not voluntarily allow any Vessel to break the Blockade.¹²

226. Every Vessel attempting either to enter or leave the Blockaded Port is to be stopped and visited.

Vessels; when to be detained.

227. The Commander should not detain any Vessel for Breach of the Blockade unless he has ascertained that each of the three following conditions has been fulfilled:

1. That an act has been committed which in law constitutes a Breach of the Blockade.
2. That at the time of committing the Breach the Master has had Notice, either Actual or Constructive, of the Blockade.
3. That at the time of capture the Vessel is still liable to the penalties for the Breach.

¹² Rolla, 6 C. Rob. 372.

Each of these conditions is considered separately, with regard to the Blockade Outwards, and with regard to the Blockade Inwards.

228. By Blockade Outwards is meant the prevention of egress of Vessels; by Blockade Inwards, the prevention of ingress.

Blockade Outwards; Breach.

229. A Breach of the Blockade Outwards is committed by any Vessel which, whether with cargo or in ballast, passes or attempts to pass out of the Blockaded Port, except

1. A Vessel, in ballast, which was in the Blockaded Port at the time when the Blockade was first instituted.¹³
2. A Vessel, in ballast, which entered during the Blockade, provided her Master was ignorant of the Blockade or had received express permission to enter from the Blockading Squadron.
3. A Vessel, with cargo, provided that *the whole* was put on board before the institution of the Blockade;¹⁴ and if the whole has been put on board before the institution of the Blockade, no Breach is committed if any part of such cargo, for the purposes of navigation, be afterwards transferred from the Vessel into lighters, and so sent out of the Blockaded Port.¹⁵

230. In any of the above excepted cases the Commander should permit the Vessel to pass, after inscribing on her Log, and also upon the Document constituting her Nationality, a Memorandum of the Visit and of the ground on which she was considered not liable to Detention.

231. A Vessel which has not herself passed out from within the line of Blockade, nevertheless commits a Breach of the Blockade Outwards, if, whilst lying outside the line of Blockade, she takes on board her cargo from lighters or other Vessels which have been sent out from within

¹³ Frederick Molke, 1 C. Rob. 86.

¹⁴ Vrouw Judith, 1 C. Rob. 150.

¹⁵ Otto and Olaf, Spinks, 257.

the line of Blockade.¹⁶ But she does not commit a Breach of the Blockade Outwards if her cargo is brought to her from the Blockaded Port, either overland, or by canal navigation in lighters which have not passed the line of Blockade.¹⁷

232. If, in breach of a Blockade Outwards, Goods are carried from a blockaded to an open port, and there landed, and then, by way of *bonâ fide* exportation, laden on board another Vessel, such other Vessel, by taking such goods on board, does not commit a breach of the Blockade Outwards; and, being free herself, the Goods on board her are also free.

Blockade Outwards ; Notice.

233. A Breach of the Blockade Outwards is always and of necessity a Breach with notice. The mere fact of the presence of the Blockading Squadron constitutes from the first Notice of the Blockade to every Vessel within the line of Blockade.¹⁸

234. Warning is unnecessary.

Blockade Outwards ; Duration of Liability of Vessels.

235. So long as the Blockade continues, the Vessel which has committed a Breach remains liable until she has completed her voyage from the Blockaded Port to her Port of Destination.¹⁹ What is her Port of Destination is a matter which has to be determined by the Commander of the Cruiser upon a consideration of all the circumstances. Usually the Port of Destination is that named in the Charter-party as the port for which the Vessel is bound, even though she may touch at any intermediate port for the purpose of loading or unloading, or under stress of weather.

236. The moment the Blockade is raised, a Vessel ceases to be liable to capture for any previously-committed Breach of Blockade, though, if already captured, she is not to be released.²⁰

¹⁶ Charlotte Sophia, 6 C. Rob. 204 n. Maria, 6. C. Rob. 201. Lisette, 6 C. Rob. 394.

¹⁷ Ocean, 3 C. Rob. 297. Stert, 4 C. Rob. 65.

¹⁸ Vrouw Judith, 1 C. Rob. 150.

¹⁹ Weelvaart van Pillau, 2 C. Rob. 129. General Hamilton, 6 C. Rob. 61. Randers Bye, cited in Christiansberg, 6 C. Rob. 381 n.

²⁰ Lisette, 6 C. Rob. 387.

Blockade Inwards ; Breach.

237. A Breach of the Blockade Inwards is committed—

1. By any Vessel, whether in ballast or with cargo, which passes or attempts to pass the Blockading Squadron into the Blockaded Port.
2. By any Vessel, whether in ballast or with cargo, which, without attempting to pass, approaches the Blockading Squadron, and either anchors²¹ or hangs about²² in such a position that it would be easy for her, without being detected, or before she could be stopped by the Blockading Squadron, to slip into the Blockaded Port or to get under cover of the forts of the hostile territory.
3. By any Vessel, whether in ballast or with cargo, which, without herself attempting to pass, discharges her cargo into lighters, to be carried by them across the Blockaded line into the Blockaded Port; but it is no Breach for a Vessel to deliver Goods at an adjoining port not itself blockaded, even though the Goods are destined for the Blockaded Port, provided that they are to be transported thither overland or by canal navigation, without crossing the Blockaded line.²³
4. By any Vessel, whether in ballast or with cargo, which is found near to the Blockaded Port, and is observed to be steering²⁴ for it, whatever may appear by her Papers to be her Port of Destination. But it is to be remembered that the Captor will not in the first instance be allowed, for the purpose of procuring the condemnation of the Vessel, to give evidence either as to the place where the Vessel was met with or the course she was steering; but all evidence must come from the Vessel's Papers or from her Master and Crew.
5. By any Vessel, whether in ballast or with cargo,

²¹ Neutralitet, 6 C. Rob. 31.

²² Charlotte Christine, 6 C. Rob. 101.

²³ Jonge Pieter, 4 C. Rob. 82.

²⁴ Mentor, Edwards, 207. Gute Erwartung, 6 C. Rob. 182. Chrissys, Spinks, 343.

which, however distant from the Blockaded Port at the time she is met with, sailed after the Notification of the Blockade with the blockaded port for her destination, and which is still pursuing that destination.²⁵ But if the Blockade is merely a Blockade *de facto*, it is no breach merely to set sail for the blockaded port. In default of Notification, a Master may sail²⁶ for a port which he knows to be actually blockaded in the hope of the Blockade being raised during the voyage, and with the intention, if the Blockade is not raised, of changing his destination before he approaches the Blockading Squadron. Again, even where the Blockade has been instituted with Notification, and nevertheless the Vessel has started for the blockaded port, her offence is purged, if, before she is met with, the Master has abandoned the destination.²⁷ But the change must be a definite one, and not merely a temporary divergence under stress of weather or fear of belligerent cruisers.²⁸

Blockade Inwards ; Actual Notice.

238. Notice of the Blockade is either Actual or Constructive.

239. The Master will be held to have had Actual Notice if he is proved to have had knowledge of the Blockade, in whatever way he may have acquired such knowledge, whether by direct warning from a belligerent cruiser or from any other source of information,²⁹ whether public or private.

240. The means of ascertaining whether the Master has had Actual Notice will be personal inquiry from the Master and Crew and examination of the Vessel's Papers: especially the Commander should examine the Charter-party and Bills of Lading, to see whether they contain any recitals as to the Blockade; and her Log, and Certificate of Registry, or other Document denoting her Nationality, to see whether any Warning of the Blockade has been inscribed thereupon.

²⁵ *Vrouw Johanna*, 2 C. Rob. 109. *Neptunus*, 2 C. Rob. 111.

²⁶ *Neptunus*, 2 C. Rob. 111.

²⁷ *James Cook*, Edwards, 263. *Imina*, 3 C. Rob. 170.

²⁸ *Minerva*, 3 C. Rob. 229.

²⁹ *Columbia*, 1 C. Rob. 154. *Franciska*, Spinks, 290. *Tutela*, 6 C. Rob. 177.

Blockade Inwards ; Constructive Notice.

241. The Master, though he has not received Actual Notice of the Blockade, will be held to have received Constructive Notice, if—

1. Notification of the Blockade has been made to the proper Authorities of the State to which the Vessel belongs, and sufficient time³⁰ has elapsed for such Authorities to communicate the Notification to the subjects or citizens of their State, whether or not they have in fact so communicated it;³¹ or if—
2. The Blockade, whether notified or not, be so notorious as to justify the presumption that the Master knew of it.³² Whether or not the Blockade is so notorious is a question which the Commander must decide for himself, upon consideration of all the circumstances. Such circumstances will be—³³
 - a. Circumstances respecting the Blockade itself; as the length of time it has been instituted; the number of Vessels warned and captured.
 - b. Circumstances respecting the place blockaded; as its locality, its importance, its facility of communication with places commercially connected with it.
 - c. Circumstances respecting the Vessel stopped; as the port from which she sailed, the time when she sailed; the course of her voyage; the probability of her having received information either from cruisers or merchant vessels, or at intermediate ports.

Breach without Notice.

242. If the Commander finds that the Master has not had Notice, either Actual or Constructive, of the Blockade,

³⁰ *Adelaide*, 3 C. Rob. 281. *Jonge Petronella*, 2 C. Rob. 131. *Calypso*, 2 C. Rob. 298.

³¹ *Spes and Irene*, 5 C. Rob. 79. *Neptunus*, 2 C. Rob. 111.

³² *Franciska*, Spinks, 299. *Tutela*, 6 C. Rob. 177.

³³ *Franciska*, Spinks, 136.

he should record a Warning upon the log of the Vessel, and also upon the document which fixes her Nationality, and order her Master to turn back. The Warning may be in Form No. 16, p. 91.

243. If the Master, after receiving the Warning, does not turn back, but perseveres in his course, or persists in loitering about, the Commander should detain the Vessel.⁸⁴

Blockade Inwards ; Duration of Liability of Vessels.

244. The moment a Blockade is raised, a Vessel ceases to be liable to capture for any previously-committed Breach of Blockade, though, if already captured, she is not to be⁸⁵ released.

Excuses for Breach of Blockade Inwards.

245. The only excuses which justify a Breach of the Blockade are :

1. Absolute necessity, as where stress of weather and want of provisions compel the Vessel to put into port, and the only accessible ports are those under Blockade.⁸⁶
2. The misinformation of the Master, provided that the person misleading him was an Officer of one of Her Majesty's Cruisers, and that the points on which the Master has been so misled have been matters of fact;⁸⁷ as, *e.g.*, where the Master has been misinformed by such an Officer that the Blockade has been raised, whereas it is still being maintained, or that the limits of the Territory under blockade are narrower than they really are. But where the misinformation of the Master by the Officer concerns only the legal consequences of a Blockade⁸⁸—for instance, when the Officer has told him that he is entitled to a Warning before his

⁸⁴ *Apollo*, 5 C. Rob. 289. *Fitzsimmons v. Newport Insurance Company*, 4 Cranch, 198.

⁸⁵ *Conferenzrath*, 6 C. Rob. 362.

⁸⁶ *Fortuna*, 5 C. Rob. 27. *Charlotta*, Edwards, 252. *Hurtige Hane*, 2 C. Rob. 127.

⁸⁷ *Neptunus*, 2 C. Rob. 111.

⁸⁸ *Comet*, Edwards, 32. *Courier*, Edwards, 249.

Vessel can be seized, or that he may go in if he takes no cargo—the Master will not be excused. And the plea of misinformation by any private person, on any point whatever, will be insufficient.

246. Other excuses are often made, but they may all be disregarded; such are:

1. That the Master was approaching the blockaded place only to ascertain whether the Blockade was not raised, and with the intention of retiring in case he found it was continuing.³⁹
2. That the Master's object in approaching the blockaded port was not a commercial one,⁴⁰ to bring in or take out a cargo; but was to get a pilot,⁴¹ or provisions,⁴² or to fetch away goods deposited there before the breaking out of the war.⁴³
3. Intoxication of the Master.
4. Ignorance of the Coast.⁴⁴
5. Loss of Compass.⁴⁵
6. Desire to avoid the higher fees payable at another port.⁴⁶

Penalty for Breach of Blockade.

247. The Penalty for Breach of the Blockade is the confiscation of both Vessel and Cargo.⁴⁷

Cessation of Blockade.

248. As soon as a Blockade ceases, from any cause, the Commander of the Squadron should take all necessary steps to make known the fact.

249. When a Blockade has once ceased, no Vessel

³⁹ *Betsy*, 1 C. Rob. 332. *Union*, Spinks, 167. *Shepherdess*, 5 C. Rob. 267. *Apollo*, 5 C. Rob. 287. *Posten*, 1 C. Rob. 335 n. *Spes and Irene*, 5 C. Rob. 79. *James Cook*, Edwards, 263.

⁴⁰ *Exchange*, Edwards, 40. *Charlotta*, Edwards, 253.

⁴¹ *Arthur*, Edwards, 202. *Elizabeth*, Edwards, 198.

⁴² *Fortuna*, 5 C. Rob. 27.

⁴³ *Comet*, Edwards, 32. *Jeanne Marie*, Spinks, 170.

⁴⁴ *Adonis*, 5 C. Rob. 257.

⁴⁵ *Elizabeth*, Edwards, 198.

⁴⁶ *Hurtige Hane*, 2 C. Rob. 127.

⁴⁷ *Panaghia Rhomba*, 12 Moore P.C. 168.

may be seized for Breach of Blockade, although committed whilst the Blockade was in force; but no Vessel already detained for Breach of Blockade should be released.⁴⁸

CHAPTER XII.

ENEMY VESSELS.

250. The Commander should detain any Enemy Vessel which he may meet with, whatever are the ports between which she is trading.

Who are Enemies.

251. The following Persons are Enemies :

- a. Any Person who has his Domicile in the Enemy's Territory, whatever be his Nationality by birth.¹
- b. Any Person who, having been born in the Enemy's Territory, has not *bonâ fide* acquired a new Domicile in British, Allied, or Neutral Territory.²
- c. Any person who, having until recently had his Domicile in the Enemy's Territory, has not *bonâ fide* abandoned that Domicile.

252. A place only in temporary occupation by the Enemy is not for this purpose to be considered as Enemy's Territory.³

253. By the Domicile of a Person is meant the place of his permanent residence, or, if he is a Trader, the principal place of his Trade. The Domicile of a Consul who trades is in the place of his Trade, and not in the Country which he represents.⁴

254. The Domicile of the Owner of a Vessel will be ascertained from her Papers—*e. g.* her Register (if any), or the Builder's Contract, if the Vessel is a new Vessel;

⁴⁸ Conferenzrath, 6 C. Rob. 362. Lisette, 6 C. Rob. 395.

¹ Johanna Emilie, Spinks, 12. Baltica, Spinks, 266. Indian Chief, 3 C. Rob. 18.

² Ernst Merck, Spinks, 102. Soglasie, Spinks, 110.

³ Gerasimo, 11 Moore P.C. 100.

⁴ Ariel, 11 Moore P.C. 119. Baltica, 11 Moore P.C. 141.

or the Bill of Sale, if the Vessel has been lately transferred; or from inquiry from the Master, who is bound to be acquainted with the name and domicile of the Owner.

What are Enemy Vessels.

255. The Commander will be justified in treating as an Enemy Vessel:

1. Any Vessel in the service of the Enemy Government, as a Transport, even though her employment is the result of Duresse.⁵
2. Any Vessel under the Flag and Pass of the Enemy Government.⁶
3. Any Vessel sailing under a License of the Enemy Government.⁷
4. Any Vessel, of whatever Nationality, sailing under Convoy supplied by the Enemy Government.⁸
5. Any Vessel (though by her Papers appearing to be a British, Allied, or Neutral Vessel) owned in whole or in part by an Enemy.⁹
6. Any Vessel apparently owned by a person domiciled in British, Allied, or Neutral Territory, if such person has acquired the ownership by a Transfer from an Enemy made after the Vessel had started upon the Voyage during which she is met with, and has not yet actually taken possession of her.¹⁰
7. Any Vessel¹¹ apparently owned by a person domiciled in British, Allied, or Neutral Territory, if such person has acquired the ownership by a Transfer from an Enemy made at any time during the war or previous to the war but in contemplation of its breaking out, unless there is satisfactory proof¹² that the Transfer

⁵ *Carolina*, 4 C. Rob. 262.

⁶ *Success*, 1 Dod. 131. *Vrouw Anna Catharina*, 5 C. Rob. 161. *Vigilantia*, 1 C. Rob. 13. *Vrouw Elizabeth*, 5 C. Rob. 2. *Fortuna*, 1 Dod. 81.

⁷ *Aurora*, 8 Cranch, 203. *Hiram*, 8 Cranch, 444. *Julia*, 1 Gall. 594.

⁸ See *Sampson Barney*, cited in *Maria*, 1 C. Rob. 346.

⁹ *Primus*, Spinks, 48. *Industrie*, Spinks, 56.

¹⁰ *Herstelder*, 1 C. Rob. 116. *Danckebaar African*, 1 C. Rob. 111. *Vrouw Margaretha*, 1 C. Rob. 336. *Baltica*, 11 Moore P.C. 141.

¹¹ *Bernon*, 1 C. Rob. 102. *Welvaart*, 1 C. Rob. 122.

¹² *Sechs Geschwistern*, 4 C. Rob. 101. *Baltica*, 11 Moore P.C. 141.

was *bonâ fide* and complete. In the event of such a Transfer being alleged, the Commander should call for the Bill of Sale, and also for any Papers or Correspondence relating to the same.¹³ If the Bill of Sale is not forthcoming, and its absence is unaccounted for, he should detain the Vessel.¹⁴ If the Bill of Sale is produced, its contents should be carefully examined, especially in the following particulars:¹⁵

- a. The Name and Residence of the Vendor.
- b. The Name and Residence of the Purchaser.
- c. The Place and Date of the Purchase.
- d. The Consideration-money and the Receipt.
- e. The Terms of the Sale.
- f. The Service of the Vessel and the Name of the Master, both before and after the Transfer.

The Name and Residence of the Vendor are material to show whether or not he was an Enemy.

The Name and Residence of the Purchaser are material to show whether or not he was a person domiciled in British, Allied, or Neutral Territory.

The Date and Place of the Purchase are material to show whether or not the Transfer was made in contemplation or in consequence of the war.

The Consideration-money is material, in case the Vessel is alleged to have been transferred by Sale, to show whether or not the transaction was *bonâ fide*. For if the transaction was professedly a Sale, then the fact that the consideration was nominal or wholly inadequate would be a just cause for suspicion. But a Transfer by way of gift or bequest will, if *bonâ fide* and complete, be as valid as a Transfer by way of Sale.¹⁶

¹³ Otto and Olaf, Spinks, 261. Benedict, Spinks, 320.

¹⁴ Caroline, Spinks, 256. Maria, Spinks, 321.

¹⁵ Juffrow Anna, 1 C. Rob. 126. Christine, Spinks, 83. Juffrow Elbrecht, 1 C. Rob. 127. Endraught, 1 C. Rob. 22. Hoop, 1 C. Rob. 129.

¹⁶ Benedict, Spinks, 316.

The Receipt for the Purchase-money should¹⁷ be called for in case the Vessel is alleged to have been transferred by Sale; but if there is proof that the Sale was *bonâ fide* and in other respects complete, the Transfer will be good, although no Receipt is forthcoming, and even although the Purchase-money has not in fact been paid.¹⁸ For the Prize Court does not consider any lien which an Enemy vendor may have upon a Vessel or Cargo or Freight for unpaid purchase-money to be a subsisting Enemy's interest rendering the Vessel liable to confiscation. However, the fact that the Purchase-money, instead of having been paid in Cash, has only been carried to an account, will raise the presumption of the Transfer being merely colorable, and such presumption cannot be rebutted, except by clear proof to the contrary.

The terms of the Sale are material to show whether the transfer was complete. The Transfer would not be complete if the Sale was not absolute; as, if it contained a Power of Revocation, or a condition for a return of the Vessel at the close of the war, or a reservation of the profits of the Vessel, or of any control over her to be left in the hands of the former Owner.¹⁹

The Service of the Vessel, and the Name of the Master, both before and after the Transfer, are material to show whether or not the Transfer be a genuine one; for if the Service has continued unaltered by the Transfer, the Commander will be justified in holding the Transfer to be colorable only.²⁰ The fact that the same Master is retained in command after the Transfer, raises a suspicion, but, standing alone, will not be conclusive that the Transfer was not *bonâ fide*.²¹

¹⁷ Rapid, Spinks, 80. Christine, Spinks, 83. Ernst Merck, Spinks, 100. Soglasie, Spinks, 110. Johanna Emilie, Spinks, 12. Bernon, 1 C. Rob. 102. Sechs Geschwistern, 4 C. Rob. 100.

¹⁸ Ariel, 11 Moore P.C. 119.

¹⁹ Sechs Geschwistern, 4 C. Rob. 100.

²⁰ Vigilantia, 1 C. Rob. 13. Endraught, 1 C. Rob. 19. Omnibus, 6 C. R. 71.

²¹ Benedict, Spinks, 316. Maria, 11 Moore P.C. 271.

If the Transfer is *bonâ fide* and complete as between the parties, the fact that it was effected in fraud of the Revenue or the law of the Mercantile Marine of any Foreign Country will be immaterial.²²

If the purchase was made through an Agent, the Letters of Procuration should be called for.²³

Lawful Condemnation ; when to be presumed.

256. If a Vessel appear to belong to a Neutral, and there is evidence that she was formerly a British Vessel, and was captured by the Enemy, and taken into an Enemy's Port for Adjudication, the Commander will, in default of direct evidence to the contrary, presume that she has been regularly condemned in the Enemy's Court of Prize, and has thereby become the lawful property of the Neutral.²⁴

²² Benedict, Spinks, 316. Otto and Olaf, Spinks, 261.

²³ Argo, 1 C. Rob. 158.

²⁴ Countess of Lauderdale, 4 C. Rob. 283.

CHAPTER XIII.

BRITISH VESSELS TRADING WITH THE ENEMY.

257. The Commander should detain any British Vessel which he may meet with trading with the Enemy.

Who are British Subjects.

257*. The following are British Subjects:

- a. Any Person who has his domicile in the British Dominions, whatever be his Nationality by birth.
- b. Any Person who, having been born in the British Dominions, has not *bonâ fide* acquired a new Domicile in the Territory of another State.
- c. Any person who, having until recently had his Domicile in the British Dominions, has not *bonâ fide* abandoned the Domicile.

258. By the Domicile of a Person is meant the place of his permanent residence, or, if he is a Trader, the principal place of his Trade. The Domicile of a Consul who trades is in the place of his Trade, and not in the Country which he represents.

259. The Domicile of the Owner of a Vessel will be ascertained from her Papers—*e. g.*, her Register (if any); or the Builder's Contract, if the Vessel is a new Vessel; or the Bill of Sale, if the Vessel has been lately transferred; or from inquiry from the Master, who is bound to be acquainted with the name and domicile of the Owner.

What are British Vessels.

260. The Commander will be justified in treating as a British Vessel—

1. Any Vessel carrying a Certificate of British Registry.
2. Any Vessel (though by her Papers appearing to be Neutral) owned by a British Subject.

3. Any Vessel apparently owned by a person domiciled in Neutral Territory, if such person has acquired the ownership by a Transfer from a British subject made after the Vessel had started upon the voyage during which she is met with, and has not yet actually taken possession of her.
4. Any Vessel apparently owned by a person domiciled in Neutral Territory, if such person has acquired the ownership by a Transfer from a British subject made at any time during the war, or previous to the war but in contemplation of its breaking out, unless there is satisfactory proof that the Transfer was *bonâ fide* and complete.¹ In the event of such a Transfer being alleged, the Commander should call for the Bill of Sale, and also for any Papers or Correspondence relating to the same. If the Bill of Sale is not forthcoming, and its absence is unaccounted for, he should detain the Vessel. If the Bill of Sale is produced, its contents should be carefully examined, especially in the following particulars:
 - a. The Name and Residence of the Vendor.
 - b. The Name and Residence of the Purchaser.
 - c. The Place and Date of the Purchase.
 - d. The Consideration-money and the Receipt.
 - e. The Terms of the Sale.
 - f. The Service of the Vessel, and the Name of the Master both before and after the Transfer.

The Name and Residence of the Vendor are material to show whether or not he was a British subject.

The Name and Residence of the Purchaser are material to show whether or not he was a person domiciled in Neutral Territory.

If the Purchase is made by an Agent, the Letters of Procuration should be produced.

The Date and Place of Purchase are material to show whether or not the Transfer was made in contemplation or in consequence of the war.

¹ Odin, 1 C. Rob, 250.

The Consideration-money is material, in case the Vessel is alleged to have been transferred by Sale, to show whether or not the transaction was *bonâ fide*; for if the transaction was professedly a Sale, then the fact that the consideration was nominal or wholly inadequate would be a just cause for suspicion. But a Transfer by way of gift or bequest will, if *bonâ fide* and complete, be as valid as a Transfer by way of Sale.

The Receipt for the Purchase-money should be called for, in case the Vessel is alleged to have been transferred by Sale; but if there is proof that the Sale was *bonâ fide*, and in other respects complete, the Transfer will be good, although no Receipt is forthcoming, and even although the Purchase-money has not in fact been paid; for the Prize Court does not consider any lien which a Vendor, being a British subject, may have upon a Vessel or her Cargo or Freight for unpaid Purchase-money to be a subsisting British interest rendering the Vessel trading with the Enemy liable to confiscation; however, the fact that the Purchase-money instead of having been paid in cash has only been carried to an account will raise a presumption of the Transfer being merely colorable, and such a presumption cannot be rebutted except by clear proof to the contrary.

The Terms of the Sale are material to show whether or not the Transfer was complete. The Transfer would not be complete, if the Sale was not absolute, as if it contained a power of revocation, or a condition for a return of the Vessel at the close of the war, or a reservation of the profits of the Vessel or of any control over her to be left in the hands of the former Owner.

The Service of the Vessel and the Name of the Master, both before and after the Transfer, are material, to show whether or not the Transfer be a genuine one. For if the Service of the Vessel was formerly from a British Port to a hostile one, and remains unaltered after the Transfer, the Commander will be justified in holding the Transfer to be colorable only. The fact that the same Master is retained in command after the Transfer raises a suspicion; but, standing alone, will not be conclusive that the Transfer was not *bonâ fide*.

If the Transfer is *bonâ fide* and complete between the parties, the fact that it was effected in fraud of the Revenue or the law of the Mercantile Marine of any Foreign country will be immaterial.

If the Purchase was made through an Agent, the Letter of Procuration should be called for.

What is trading with the Enemy.

261. The Commander will be justified in considering a British Vessel as trading with the Enemy—

1. If she has commenced her voyage from a Hostile port.
2. If during her voyage she has touched at a Hostile port as a port of call, whether she has actually taken cargo on board thence or not.²
3. If she commenced her voyage, having a Hostile port, either certainly or according to contingencies, for her port of destination or port of call, unless, previous to the time when she is met with, her Master has definitively abandoned the intention to go to a Hostile port.

262. A port only in the temporary occupation of the Enemy is not to be considered a Hostile port.³

263. The Commander should release a British Vessel found trading with the Enemy if he is satisfied that her Master was pursuing such trade in ignorance that war has broken out.

264. But it will be no excuse that the Vessel was chartered to bring back to British Territory British property deposited in the Enemy's Territory before the breaking out of the war, if such Charter-party was entered into with knowledge of the war.⁴

Allied Vessels not to trade with the Enemy.

265. Vessels owned by subjects of an ally of Great Britain in the war are not at liberty any more than British Vessels to trade with the Enemy; and, *mutatis mutandis*, the above observations relative to British Vessels trading with the Enemy are applicable to Allied Vessels trading with the Enemy.⁵

² Wildman, ii. pp. 20, 22. Duer, i. 570. Joseph, 8 Cranch, 454.

³ Gerasimo, 11 Moore P.C. 100.

⁴ Schooner Rapid, 1 Gall. 295. Brig Alexander, 1 Gall. 532.

⁵ Hoop, 1 C. Rob. 216, 217. Nayade, 4 C. Rob. 251. Ceres, 3 C. Rob. 79. Neptunus, 6 C. Rob. 403.

PART III.

MISCELLANEOUS.

CHAPTER XIV.

NEUTRAL TERRITORIAL WATERS.

266. A Vessel in Neutral Territorial Waters is not liable to Visit, Search, or Detention, notwithstanding that she may have been beyond those limits when first descried or chased.

267. Sometimes it happens that, after capturing a Vessel, the Commander ascertains that the Capture was made in Neutral Territorial Waters; in such case the Commander should release her, if an express application is made by the Authorities of the Neutral Territory for her restoration.

Right to enter a Neutral Port.

268. Subject to any limit which the Neutral Authorities may place upon the number of Belligerent Cruisers to be admitted into any one of their Ports at the same time, the Commander may, by the Comity of Nations, enter a Neutral Port with his Ship for the purpose of taking shelter from the Enemy or from the weather, or of obtaining provisions or repairs that may be pressingly necessary.

269. For the same purpose the Commander may, unless prohibited by the Neutral Authorities, bring his Prize or Prizes also into a Neutral Port; but if the Neutral Authorities do prohibit the bringing in of the Prize, he is bound to acquiesce.

Conduct whilst in a Neutral Port.

270. The Commander is bound to submit to any regulations which the Local Authorities may make respecting

the place of anchorage, the limitation of the length of stay in the Port, the interval to elapse after a Hostile Cruiser has left the Port before the Commander's Ship may leave in pursuit, &c.

271. Both the Cruiser and (if admitted) her Prize are, by the Comity of Nations, exempt from the local jurisdiction.¹

272. The Commander must abstain from any acts of hostility towards the Subjects, Cruisers, Vessels, or other property of the Enemy which he may find in the Neutral Port.

273. The Commander must also abstain from increasing the number of his guns, from procuring Military Stores, and from augmenting his Crew even by the enrolment of British subjects.

274. The Commander may not use Neutral Territorial Waters as an habitual War Station whence to sally out with his Ship or Boats and exercise the rights of Visit, Search, or Detention upon Vessels lying beyond the limits of Neutral Territorial Waters.² But a Commander may pass over Neutral Territorial Waters in order to effect a Capture beyond, provided they are not Waters which cannot usually be passed through without express permission.

¹ Cushing, Attorney-General's opinions, vii. 123.

² *Twee Gebroeders*, 3 C. Rob. 162.

CHAPTER XV.

CARTEL.

275. Vessels actually engaged in Cartel service are exempt from Detention, and this alike when they actually have prisoners on board and when they are empty; whether going to fetch prisoners or returning after having delivered them.¹

276. Cartel Vessels ought to be furnished with a Pass from a Commissary of Prisoners in the country of one of the Belligerents; but the Commander should not detain a Vessel, though not furnished with such a Pass, if there is substantial evidence of any kind that she is *bonâ fide* actually being employed as a Cartel Vessel.²

277. The fact that a Vessel sails under a Flag of Truce or under the Flags of both Belligerents at the same time will not alone be sufficient evidence that she is being employed as a Cartel Vessel.³ A Vessel professedly going to seek employment in the Cartel service, but navigated by the Master on his own responsibility, without a Pass from a Commissary of Prisoners, is not entitled to be considered a Cartel Vessel.⁴

278. Cartel Vessels are not at liberty to traffic or to carry any cargo whatever or Despatches; if they do, they are liable to Detention.⁵

¹ Daifjie, 3 C. Rob. 142. La Gloire, 5 C. Rob. 193. Twiss, ii. 354.

² La Gloire, 5 C. Rob. 198.

³ La Gloire, 5 C. Rob. 198.

⁴ Daifjie, 3 C. Rob. 142.

⁵ Venus, 4 C. Rob. 355. La Rosine, 2 C. Rob. 372.

CHAPTER XVI.

CONVOY.

Enemy Convoy.

279. Vessels under Enemy Convoy are liable to Capture.¹

Neutral Convoy.

280. Vessels under Neutral Convoy are not on that ground exempt from Visit, Search, and Detention.²

281. Any resistance made by a Convoying Ship to the lawful Visit and Search of any Vessel under her escort will justify the Detention of both the Convoying Ship and all Vessels convoyed by her.³

282. If upon the Visit and Search of a Vessel under Convoy it should appear that the Master set sail with instructions to make an armed resistance to Search, the Vessel should be detained.

British Convoy.

283. The Commander, if engaged in convoying Vessels, may nevertheless employ his Ship to make Captures or to assist other Cruisers in making Captures, provided that he does not neglect or expose the Vessels under his Convoy.⁴

¹ Sampson Barney, cited in *Maria*, 1 C. Rob. 346.

² *Maria*, 1 C. Rob. 340.

³ *Maria*, 1 C. Rob. 340. *Elsebe*, 5 C. Rob. 176.

⁴ *Galen*, 1 Dod. 429.

CHAPTER XVII.

RECAPTURE.

Recapture of a British Vessel.

284. It is the duty of the Commander, if possible, to rescue any British Vessel which he may find attacked or captured by the Enemy.

285. If he succeed in effecting the rescue of such a Vessel, he may either at once send her in for Adjudication, or at his option, unless she shall have been already carried into an Enemy's Port, or set forth or used by the Enemy as a Ship of War, allow her to prosecute her voyage and unlade and dispose of her Cargo.

286. Upon Adjudication, the Prize Court will order the Vessel and Cargo to be restored to their respective owners upon payment by them of Prize Salvage.

287. If the Commander shall have allowed the Vessel so to prosecute her Voyage, he will be allowed to defer proceedings for Adjudication till the return of the Vessel to a Port within the United Kingdom.

288. In case the Vessel shall not, within six months, return to some Port within the United Kingdom, the Recaptors may, notwithstanding, institute proceedings for Adjudication against the Vessel and her Cargo in the High Court of Admiralty of England; and the Court may thereupon award Prize Salvage, and may enforce the payment thereof either by Warrant of Arrest against the Vessel and Cargo, or by Monition and Attachment against the owners of the Vessel and Cargo.¹

289. The Prize Salvage which will be awarded to the Recaptors for the Recapture of any British Vessel before she has been actually carried into an Enemy's Port is one-eighth of the value of the Prize; or, in case the Recapture has been made under circumstances of special difficulty or danger, a sum not exceeding one-fourth part of the value.²

290. If, however, the Vessel has, before her Recapture, been set forth or used by the Enemy as a Ship of War,

¹ Naval Prize Act, 1864, Sec. 41.

² Naval Prize Act, 1864, Sec. 40.

then, upon Recapture, the original owner is not entitled to Restitution, but both Vessel and Cargo will be condemned as Lawful Prize to the Recaptors.³

291. The Commander will be justified in considering a Vessel to have been set forth or used by the Enemy as a Ship of War, if, after Capture, she has been commissioned by the Enemy as a Ship of War, or has been used as a Privateer, or has been armed by an Enemy Officer ostensibly in the exercise of authority; but not if no more has been done to her than the augmentation of her crew, or the arming of her by persons not in authority.

Recapture of a British Prize.

292. It may happen that an Enemy Vessel is captured by a British Cruiser, again lost to an Enemy's Cruiser, and finally recaptured by another British Cruiser. The Commander effecting such a Recapture should send the Vessel in for Adjudication, and the original Captors are not entitled to Restitution, but both Vessel and Cargo will be condemned as Lawful Prize to the Recaptors.

Recapture of a Neutral Vessel.

293. If a Commander recapture from the Enemy a Neutral Vessel, which would not have been liable to condemnation in the Prize Court of the Enemy, he is not entitled to Salvage; and should, without delay and without taking ransom, set her free to prosecute her Voyage.⁴

Recapture of an Allied Vessel.

294. If a Commander recapture from the Enemy an Allied Vessel, his duty is generally regulated by Treaty. In default of Treaty Regulations he will send her in to a British Port for Adjudication; and the Prize Court will award Salvage or not, according as the Prize Court of the Ally would or would not have awarded Salvage to an Allied Ship for recapturing a British Vessel.

³ Naval Prize Act, 1864, Sec. 40.

⁴ War, Onskan, 2 C. Rob. 300.

CHAPTER XVIII.

JOINT CAPTURE.

Joint Capture by British Ships-of-War.

295. The Ship to which a Prize strikes her Flag is the Actual Captor. Other Ships may be held by the Prize Court entitled to share as Joint Captors on the ground either of Association or Co-operation with the Actual Captor.

296. If Ships are associated or co-operating together, a Capture made by one inures to the benefit of all.

Association.

297. The Bond of Association exists—

- (1) Between Ships composing a Blockading or Cruising Squadron, with the exception of those which are absent at the time of the Capture, by reason of having been detached upon a separate service.
- (2) Between Ships chasing together, provided that the Senior of the Commanders of the several Ships has assumed the command over all.

Co-operation.

298. Ships being in sight of the Prize, as also of the Captor, under circumstances to cause intimidation to the Prize and encouragement to the Captor, are held to be Co-operating with the Actual Captor.

299. In all cases of alleged Joint Capture the Commander, whether he is the Actual Captor or claims to be Joint Captor, should, as soon as possible after the Capture, draw up a list of all the officers, seamen, marines, soldiers, and others who were actually on board his ship on the occasion of the Capture; and also a list of the names of those belonging to the Crew who were absent on duty or otherwise at the time; and the cause of such absence should be specified. Each list should contain the quality of the service of each person and their several ratings; and

must be subscribed by the Commander and three or more of the Chief Officers on board.

300. The Commander should then send these lists, together with the particulars specified in Section 14, and his Report of the whole proceeding, to the Secretary of the Admiralty.¹

301. The distribution of all Prize Money is regulated by the Royal Proclamation of the 19th of May 1866 ; a copy of which will be found in the Appendix, page 106.

Joint Capture by British and Allied Ships-of-War.

302. In the case of Captures made jointly by British and Allied Ships-of-War, the duties of the respective Commanders are usually regulated by Treaty. A copy of the Convention made for this purpose between Great Britain and France during the late Russian War will be found in the Appendix, page 118.

303. In default of Treaty regulations, then,

- a. If one Ship is the Actual and another the Joint Captor, the charge of the Prize belongs to the Commander of the Ship which is the Actual Captor, whether he is the Junior or Senior ; and he should send her into a Port of his own country for Adjudication.
- b. If two Ships are both Actual Captors, the charge of the Prize belongs to the Senior of the two Commanders ; and he should send her into a Port of his own Country for Adjudication.

¹ Royal Proclamation, May 19, 1866.

FORMS.

FORM No. 1 (referred to in Sect. 63).

*Affidavit as to Ship-Papers on board at the time of Capture,
and delivered up.*

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows :

(1) I was present at the Capture of the above-named
Vessel, the _____, whereof _____ was
Master, by Her Majesty's said Ship, the _____, on
the _____ day of _____, 18____.

(2) The papers hereunto annexed, and marked No. 1
to No. _____ inclusive, are all the Papers which were on
board at the time of the capture of the said Vessel and
were delivered up.

(3) The said Papers are now in the very same plight,
save the numbering thereof, as when the same were deli-
vered up.

A. B.

Sworn by the said A.B. at _____,
on the _____ day of _____, 18____.

Before me, C.D., of _____.

Here let the
person be-
fore whom
the Affidavit
is sworn
insert his
name, rank,
and autho-
rity.

FORM No. 2 (referred to in Sect. 64).

*Affidavit as to Ship-Papers thrown overboard or destroyed at
the time of the Capture.*

THE _____; _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows:

(1) I was present at the Capture of the above-named
Vessel, the _____, whereof _____ was
Master, by Her Majesty's said Ship, the _____, on
the _____ day of _____, 18_____.

(2) *A few minutes before the Capture aforesaid, I saw
two packets of Papers thrown from one of the port-holes of
the said Vessel; the Cutter was immediately lowered; one
of such packets sunk and was lost, but the Cutter's Crew suc-
ceeded in saving the other packet.*

(3) The Papers hereunto annexed, and marked No. 1
to No. _____ inclusive, are all the Papers so saved, and are
now in the very same plight, save the numbering thereof,
as when they were so saved.

A..B.

Sworn by the said A. B. at _____,

on the _____ day of _____ 18_____.

Before me, C. D., of _____.

G

Here let the
person be-
fore whom
the Affidavit
is sworn
insert his
name, rank,
and autho-
rity.

FORM No. 3 (referred to in Sect. 65).

*Affidavit as to Ship-Papers found concealed at the time of
the Capture.*

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows:

(1) I was present at the Capture of the above-named
Vessel, the _____, whereof _____ was
Master, by Her Majesty's said Ship, the _____, on
the _____ day of _____, 18_____.

(2) In searching the Vessel on the occasion of the said
Capture, I found stowed away and concealed in _____
a packet of Papers.

(3) The Papers hereunto annexed, and marked No. 1
to No. _____ inclusive, are all the Papers so found, and
are now in the very same plight, save the numbering thereof,
as when they were so found

A. B.

Here let the
person be-
fore whom
the Affidavit
is sworn
insert his
name, rank,
and autho-
rity.

Sworn by the said A. B. at _____,

on the _____ day of _____, 18_____.

Before me, C. D., of _____.

FORM No. 4 (referred to in Sect. 67).

Certificate, to be made by the Commander, as to Money and Valuables found on board the Prize, Copy of which must in all cases be delivered to the Master.

THE _____, _____ MASTER.

I, the undersigned _____, holding the rank of _____ in Her Britannic Majesty's Navy, and commanding Her Majesty's Ship _____, do hereby certify that the following is a correct Account of all Moneys and Valuables found on board the _____ Vessel _____, detained by me, as Lawful Prize of War, on the _____ day of _____, 18____.

Here state the several articles, distinguishing whether they were voluntarily given up, or were found concealed, and where.

Signed this _____ day of _____, 18____.

Commanding Her Majesty's Ship _____.

NOTE.—I do hereby declare that on the _____ day of _____, 18____, I delivered a Copy, signed by myself, of the above Certificate to the Master of the _____, and that _____

Here state whether or not the Master made any objection, and, if he did, what the nature of the objection was.

Signed this _____ day of _____, 18____.

Commanding Her Majesty's Ship _____

FORM No. 5 (referred to in Sect. 85).

*Affidavit by Prize Officer as to Removal of Crew from Prize
by Commander.*

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows:

(1) On the _____ day of _____, 18____, Capt.
_____, the Commander of the said Ship, captured
the said Vessel, the _____ in latitude _____
and longitude _____, and detained her as Lawful
Prize of War.

(2) On the _____ day of _____, 18____, the
said Capt. _____, previous to sending the Prize in
for Adjudication, removed from her _____

(3) The cause of the said removal was _____

A. B.

Here let the
person before
whom the
Affidavit is
sworn insert
his name,
rank, and
authority.

Sworn by the said A. B. at _____,
on the _____ day of _____, 18____.

Before me, C. D., of _____.

FORM No. 6 (referred in Sect. 93).

Affidavit by Prize Officer as to Sale of Cargo.

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding the rank of _____ in Her Britannic Majesty's Navy, and belonging to Her Majesty's Ship _____ make oath as follows:

(1) On the _____ day of _____ 18____, Captain _____ the Commander of the said Ship _____, captured the said Vessel the _____, in latitude _____ and longitude _____, and detained her as Lawful Prize of War.

(2) On the _____ day of _____ 18____, the said Captain _____ ordered a Survey to be made of the Cargo on board the Prize.

(3) The Paper marked A, and annexed to this Affidavit, is the Report made by the Officers appointed to make the said Survey.

(4) In consequence of this Report, Captain _____ ordered me to navigate the Prize in the first instance to the Port of _____, and there to sell the Cargo by Public Auction.

(5) On or about the _____ day of _____ 18____, I arrived in charge of the Cargo at the said Port of _____, and I forthwith directed the Cargo to be appraised by C. D. and E. F., of _____, being the most competent persons I could find for the purpose.

(6) Previous to making the Appraisement, the said C. D. and E. F. were sworn to be impartial, and the Paper marked B and annexed hereto is the Affidavit so sworn by them.

(7) The Paper marked C and annexed hereto is the Appraisement made by the said C. D. and E. F.

(8) On or about the _____ day of _____, I ordered a Sale to be made of the Cargo by Public Auction at _____. The Paper marked D and annexed hereto is the Advertisement of the said Auction in _____.

(9) On the _____ day of _____, the Sale as advertised took place. I was present thereat, and saw the Cargo sold.

(10) The Paper marked E and annexed hereto is the Account Sale of the said Cargo, delivered to me by the said _____ showing a net balance upon the sale of the said Cargo to the amount of £ _____.

(11) On the _____ day of _____ 18____, I transmitted the said sum of £ _____ to _____.

A. B.

Sworn by the said A. B. at _____,
on the _____ day of _____ 18____.

Before me, C. D., of _____.

Here let the person before whom the Affidavit is sworn insert his name, rank, and authority.

FORM No. 7. (referred to in Sect. 99).

Affidavit by Prize Officer as to sending the Prize into a Neutral Port pending Adjudication.

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding the rank of _____ in Her Britannic Majesty's Navy, and belonging to Her Majesty's Ship _____ make oath as follows :

(1) On the _____ day of _____ 18____, Captain _____, the Commander of the said Ship, captured the said Vessel, the _____, in latitude _____ and longitude _____, and detained her as Lawful Prize of War.

(2) On the _____ day of _____, 18____, the said Captain _____ ordered a Survey to be made of the Prize.

(3) The Paper marked A and annexed to this Affidavit is the Report of the Officers appointed to make the said Survey.

(4) In consequence of the said Report, Capt. _____ ordered me to navigate the Prize to the Port of _____.

(5) In obedience to the said Order, I navigated the Prize to the said Port of _____, and arrived there on the _____ day of _____ 18____, and forthwith delivered the Prize to

A. B.

Here let the person before whom the Affidavit is sworn insert his name, rank, and authority.

Sworn by the said A. B. at _____,
on the _____ day of _____, 18____.

Before me, C. D., of _____:

FORM No. 8 (referred to in Sect. 102).

Inventory of the Stores, Furniture, and Cargo of the Prize, to be drawn up by the Prize Officer, and a Copy to be delivered to the Master.

THE _____, _____ MASTER.

I, _____, holding the rank of _____ in Her Britannic Majesty's Navy, and the Prize Officer in charge of the _____ Vessel _____, detained as lawful Prize of War on the _____ day of _____, 18____, by Her Majesty's Ship _____, _____, Commander, do hereby certify that the following is a correct Inventory of the Stores, Furniture, and Cargo of the said Vessel, so far as the said can be ascertained without disturbing the Stowage; _____

Signed this _____ day of _____, 18____.

NOTE.—I do hereby declare that on the _____ day of _____, 18____, I delivered a Copy, signed by myself, of the above Inventory to the Master of the _____, and that _____

Here state whether or not the Master made any objection, and, if he did, what the nature of the objection was.

Signed this _____ day of _____, 18____.

To be signed by the Prize Officer, adding his rank in the Royal Navy.

FORM No. 9 (referred to in Sect. 104).

*Affidavit by Prize Officer as to Ship Papers delivered up
subsequently to the Capture.*

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows :

(1) On the _____ day of _____, 18____,
I was appointed Prize Officer in charge of the said Vessel,
the _____, for the purpose of taking her to the
Port of _____ for adjudication.

(2) In the course of the said voyage, namely, on the
_____ day of _____, the Master of the said Ves-
sel delivered up to me the Papers hereunto annexed, and
marked No. 1 to No. _____ inclusive.

(3) The said Papers are all the Papers so delivered
up, and are now in the very same plight, save the num-
bering thereof, as when they were so delivered up.

A. B.

Here let the
person before
whom the
Affidavit is
sworn insert
his name,
rank, and
authority.

Sworn by the said A. B. at _____,
on the _____ day of _____, 18____.

Before me, C. D., of _____.

FORM No. 10 (referred to in Sect. 104).

Affidavit by Prize Officer as to Ship Papers thrown overboard subsequently to the Capture.

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding the rank of _____ in Her Britannic Majesty's Navy, and belonging to Her Majesty's Ship _____, make oath as follows :

(1) On the _____ day of _____ 18____ I was appointed Prize Officer in charge of the said Vessel, the _____, for the purpose of taking her to the Port of _____ for adjudication.

(2) In the course of the said voyage, namely, on the _____ day of _____, 18____, I saw two packets of Papers thrown from one of the port-holes of the said Vessel ; the Cutter was immediately lowered ; one such packet sunk and was lost, but the Cutter's Crew succeeded in saving the other packet.

(3) The Papers hereunto annexed, and marked No. 1 to No. _____ inclusive, are all the Papers so saved, and are now in the very same plight, save the numbering thereof, as when they were so saved.

A. B.

Sworn by the said A. B. at _____,
on the _____ day of _____, 18____.

Before me, C. D., of _____.

Here let the person before whom the Affidavit is sworn insert his name, rank, and authority.

FORM No. 11 (referred to in Sect. 104).

*Affidavit by Prize Officer as to concealed-Ship Papers found
subsequently to the Capture.*

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows :

(1) On the _____ day of _____, 18____, I was
appointed Prize Officer in charge of the said Vessel, the
_____, for the purpose of taking her to
the Port of _____ for adjudication.

(2) In the course of the said voyage, namely, on the
_____ day of _____, I found stowed away and con-
cealed in _____ a packet of Papers.

(3) The Papers hereunto annexed, and marked No. 1
to No. _____ inclusive, are all the Papers so found, and
are now in the very same plight, save the numbering
thereof, as when they were so found.

A. B.

Here let the
person before
whom the
Affidavit is
sworn insert
his name,
rank, and
authority.

Sworn by the said A. B. at _____,

on the _____ day of _____, 18____.

Before me, C. D., of _____.

FORM No. 12 (referred to in Sect. 111).

*Affidavit by Prize Officer as to Removal of the Master, or
Crew, or Cargo, from on board the Prize.*

THE _____, _____ MASTER.

I, the undersigned A. B. _____, holding
the rank of _____ in Her Britannic Majesty's
Navy, and belonging to Her Majesty's Ship _____,
make oath as follows:

(1) On the _____ day of _____ 18____, I was
appointed Prize Officer in charge of the said Vessel, the
_____, for the purpose of taking her to the Port
of _____ for adjudication.

(2) In the course of the said voyage, namely, on the
_____ day of _____, I removed from the said Ves-
sel the following, namely : _____

Here state
who or what
was re-
moved, and
the place of
removal.

(3) The cause of the said removal was _____

A. B.

Sworn by the said A. B. at _____,

on the _____ day of _____, 18____.

Here let the
person before
whom the
Affidavit is
sworn insert
his name,
rank, and
authority.

Before me, C. D., of _____.

FORM No. 13 (referred to in Sect. 120).

*Standing Interrogatories administered to persons found on board Captured Ships, and examined as witnesses in preparatory, during the late Russian war.*¹

Standing Interrogatories to be administered on behalf of our Sovereign Lady Victoria, by the grace of God of Great Britain and Ireland Queen, Defender of the Faith. To all Commanders, Masters, Officers, Mariners, and other persons found on board any Ship or Vessel which hath been or shall be seized or taken as prize by any of Her Majesty's Ships or Vessels of War, concerning such captured Ships or Vessels, or any goods, wares, or merchandise on board the same, examined as Witnesses in preparatory during the present hostilities.

Let each witness be asked the following questions, and let his answer to each question be written down distinctly and separately.

1. What are your true names? Where were you born? In what place or places have you lived during the seven years last past? Where do you now live, and how long have you lived in that place? To what prince, state, or power are you now, or have you at any previous time, and when, been a subject? or said or represented that you were a subject? Have you ever, and when, taken any and what oath of allegiance, and to whom? or obtained, or received, or applied for any and what certificate of your being a citizen or subject of, or entitled to the protection of, any and what state or country? Of what cities or towns have you ever been admitted a burgher or freeman? And when and in what manner were you so admitted? How long have you resided there since you were so admitted? Where have you since resided? What did you pay for your aforesaid admission? Are you married? If yea, where do your wife and family reside?

2. Were you present at the time of the taking and seizing of the ship or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any and what commission or letters of marque? If she had, what was that commission or letter of marque, and by whom, when, and where was it granted?

3. In what port or place, by latitude and longitude, bearing and distance, and in what year, month, and day were the ship and goods, concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons, were they, or any, and what part thereof, so seized? Into what port or place were they

* These Interrogatories were framed many years ago to meet the requirements of the Law, as it then stood, but which has now, in many important respects, become obsolete. In the event of Great Britain being engaged in a Naval war, it is probable that a new set of Interrogatories will be officially issued.

carried? Under what colours did the said ship sail first on her voyage? What colours had she hoisted or flying when seized or captured? What other colours had she on board, and for what reason had she such other colours? Did she ever, and when, hoist the same, or any, and which of them? Was any resistance made at the time the said ship was taken? and if yea, what sort of resistance, and by whom? Were any and what descriptions of fire-arms, or cannon, or muskets, or any other and what kind of weapons used in such resistance? By whom, or by what ship or ships were you taken? Was such vessel a ship of war, or a vessel acting without any commission, as you believe? Were any other, and if yea, what, ships in sight at the time of the capture?

4. What is the name of the master or commander of the captured ship concerning which you are now examined? How long have you known the said master? Who appointed him to command the said ship? Where and when did he first take possession of her, and at what time? and who by name delivered the possession of her to him? Where is such person? and where is the master now? Where is the fixed place of abode of each of them? If the witness replies that either has no fixed place of abode, then ask him where was the last place of abode of such person? And where did he generally reside? How long has he lived there? Where was he born, and of what state is he now a subject? Is he married? If yea, where do his wife and family reside?

5. Of what tonnage or burthen is the ship concerning which you are now examined? What was the number of mariners on board her when you joined her? And at the time of her capture or seizure? And of what country was each of the said mariners? Did all such mariners come on board at the same port? And if nay, at what ports did they severally come on board? Who shipped or hired each of them, and when and where were they so shipped or hired? and for, or upon, what voyage?

6. Had you, or any, and which of the officers or mariners belonging to the ship concerning which you are now examined any, and if yea, what part, share, or interest in the said ship or her lading? Set forth who among the said officers or mariners are so interested, and to what extent you or they are so interested? Did you belong to the ship at the time she was seized and taken? If yea, in what capacity? How long have you known the said ship? When and where did you first see her? Where was she built?

7. What is the name of the said ship? How long has she been so called? Do you know of any other name or names by which she has ever and when been called? If yea, set forth such names, and when, and why, and for how long she was called by each or any of such names? Had she any passport or sea-brief on board? and if yea, from whom?

8. To what ports and places did she sail during the said voyage before she was taken? Where did the voyage on which she was taken begin? and where was it to have ended? Set forth the nature of every voyage the said ship has sailed upon, and the quality of every cargo the said ship has carried from the time you have known her up to the time of her capture, and state at what port each of such cargoes has been delivered. From what ports and at what

time, particularly from the last clearing port, did the said ship sail previously to the capture? Under whose direction and management has she usually been with respect to her employment or trade? With whom do you correspond on the concerns of the vessel or her cargo?

9. What lading did the said ship carry at the time of her setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year, month, and place was the same put on board her? Set forth the different species of the lading, specifying the quantity of each species.

10. Who were the owners of the ship concerning which you are now examined, at the time when she was seized? How do you know that such persons were the owners at such time? Of what nation or country are such owners by birth? Where do they reside? and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? Of what princes, states, or powers are they subjects or citizens?

11. Was any bill of sale, or any and what similar document of transfer, made?—and if yea, by whom?—to the aforesaid owners of the said ship? If any was made, in what month, year, where and before what witnesses was such bill of sale or similar document of transfer made? Where did you last see it, and what is become of it? Was any, and what, engagement entered into concerning the purchase further than what appears upon the bill of sale? If yea, was it verbal, or in writing? If in writing, where did you last see such writing, and what has become of it?

12. Was the said lading put on board in one port, and at one time, or in several ports, and at several times; and in what ports by name, and at what times particularly? Set forth what quantities of each sort of goods were shipped at each port.

13. What are the names of the respective laders, or owners, or consignees, of the said goods? What countrymen are they? Where do they now live and carry on their business or trade? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said consignees or laders any, and what, interest, in the said goods? If yea, whereon do you found your belief that they have such interest? Can you take upon yourself to swear that you believe that at the time of the lading the cargo, and at the present time, and also if the said goods shall be restored and unladen at the destined ports, the goods did, do, and will belong to the same persons, and to none others?

14. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colourable, or were any bills of lading signed which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

15. Are there any where in Great Britain, and where particularly, any bills of lading, invoices, letters, or instruments relative to the ship and goods concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what

is the purport thereof, and when they were brought or sent there.

16. Was there any charter-party signed for the voyage in which the ship concerning which you are now examined was seized and taken? What became thereof? When, where, and between whom was such charter-party made? What were the contents of it?

17. What papers, charter-parties, bills of lading, invoices, letters, or other writings were on board the ship at the time she took her departure from the last clearing port, before she was taken as prize? Were any, and if yea, which of them burned, torn, thrown overboard, destroyed, altered, or cancelled, or concealed, or attempted to be concealed, and when, and by whom, and in whose presence?

18. Has the ship concerning which you are now examined ever been, and if yea, when, seized as prize, and condemned as such? If yea, set forth by whom, when, and where, she was seized and into what port she was carried, and by whom, and by what authority, and on what account she was so condemned.

19. Have you sustained any loss, and what, by the seizing and taking of the ship or goods concerning which you are examined? If yea, how do you compute such loss? Have you hitherto received any indemnity, satisfaction, or promise of satisfaction, for any part of the loss or damage which you have sustained, or may sustain, by this capture and detention? And if yea, when, and from whom?

20. Are the said ship and goods, or is any, and what part thereof, insured? If yea, for what voyage, and against what risks was such insurance made? And at what premium? And when and by what persons and in what country?

21. In case you had arrived at your destined port, would your cargo or any part thereof, on being unladen, have immediately become the property of the consignees or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

22. State in respect to the lading of the ship concerning which you are now examined and each part thereof, in what country the same was grown and produced and manufactured respectively.

23. When the said cargo was originally put on board, was all the said cargo, or any, and what, part thereof, and when taken from the shore and quay, or removed or transshipped from one boat, barque, vessel, or ship to another? From what, and to what, shore, quay, boat, barque, vessel, or ship, and when and where was the same so taken, removed, or transshipped?

24. Are there in any country besides Great Britain, and where particularly, or on board any and what ship or vessel, other than the ship concerning which you are now examined, any letters, instruments, papers, or documents relative to the said ship or goods as you know, believe, or have heard? And of what nature are such letters, instruments, papers, or documents? And what are their contents, as you know, believe, or have heard? In whose possession are they, and do they differ from any of the papers on board? And if yea, in what particular?

25. Were any papers delivered out of the said ship or vessel,

and carried away in any manner whatsoever? And if yea, when, and by whom, and to whom? And in whose custody, possession, or power do you believe the same now to be?

26. Was bulk broken during the voyage in which you were taken, or since the said ship was captured? And if yea, when, where, and by whom? By whose orders, for what purpose, and in what manner?

27. Were there any passengers on board the aforesaid ship during any, and what, part of the voyage on which she was captured? If yea, how many, and who were such passengers by name? Of what nation, rank, profession, or occupation was each of them? Did any, and which of them, hold any, and what, commission? And from whom and for what purpose? Were any, and which, of such passengers secreted at the time of the capture, and why? At what place, and when, was each of them taken on board? To what place was each of them destined, or said or supposed to be destined, and upon what business? or for what real purpose or design was he destined there? Did they pay, or agree to pay, any thing, and what, for their passage, and to whom? Had any, and which, of such passengers any, and what, property, or concern, or authority, directly or indirectly, regarding the ship or cargo? Were there at any time during the voyage in which the said ship was captured any officers, soldiers, or mariners secreted on board her? And if yea, for what reason were they so secreted? Were any of Her Britannic Majesty's subjects on board, or secreted or confined, during the said voyage or at the time of the capture? If yea, how long had they been so secreted or confined, and for what reason?

28. Were, and are, all the passports, sea-briefs, charter-parties, bills of sale or lading, invoices, and papers found on board the said ship, and referring to the ownership thereof or to the cargo, true and fair, or are any, and which, of them false and colourable? Do you know of any matter or circumstance to affect their credit? By and from whom were the passports and sea-briefs obtained? Were they obtained for this ship only, and upon the oath or affirmation of the persons therein described? or were they delivered to, or on behalf of, the person or persons who appear to have been sworn, or to have affirmed thereto, without their having ever, in fact, made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same? And is there any duty or fee payable and paid for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea-briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass or letters of safe conduct? If yea, from whom, and for what business?

29. If it should appear that there are in any place or country besides Great Britain any bills of lading, invoices, instruments or papers relative to the ship concerning which the witness is now examined, ask him, how did the same come to be in such place or country? Were you ever in such place or country? and if yea,

when, and on what account? In whose possession are such instruments or papers? Do they differ? and if yea, in what particulars, from any of the papers on board or in Great Britain, or from any other papers referring to the same ship in any other place? Have you written or signed any letters or papers concerning the said ship or her cargo? If yea, set forth their purport. To whom were such papers written and sent, and what has become of them?

30. Towards what port or place was the ship steering her course at the time of her being first pursued and taken? Was her course altered upon or after the appearance of the vessel by whom she was taken, and how altered, and with what object or purpose? Was her course at all times when the weather would permit directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship before, or at the time of, her capture sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered at any and what time, and to or towards any, and what, other port or place, and for what reason? Did she make any, and what, attempt to escape the said ship by which she was captured? When did she first see that ship, and at what distance? Did she thereupon make or shorten sail, or slacken or increase her speed, and how? When and by what means was she stopped, brought to, or boarded?

31. By whom and to whom has the said ship ever been sold and transferred, and how often and at what time and place, and for what sum or consideration? Has such sum or consideration been paid or satisfied? Was such sum a fair equivalent for her? If such sum has not been paid, what security or securities have been given for the payment of the same and by whom? And where do the persons who have given such security now live? Do you know or believe in your conscience, such sale or transfer to have been truly made, and not for the purpose of covering or concealing the real property or interest in the ship? Do you verily believe, that if the ship be restored, she will belong to the persons now asserted to be her owners, and no others? Are there any, and if yea, what, private agreements for the return of the ship to her former owners, at the conclusion of the war, or at any and what other period?

32. What guns were mounted on board the said ship, and of what calibre were they? and what arms and ammunition were there belonging to her? Why was she so armed? Were there on board any other guns, mortars, howitzers, balls, shells, rockets, hand-grenades, rifles, muskets, carabines, pistols, fuzees, halberds, spon-
toons, swords, bayonets, locks for muskets, flints, ramrods, belts, cartridges, cartridge-boxes, pouches, gunpowder, percussion-caps, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing or accoutrements, or any sort of warlike and naval stores, or steam-engines or machinery, or parts thereof? Were any of such warlike, or naval, stores or things thrown overboard, at or before the time of the capture? And were, and are, any such warlike or other stores before described concealed on board under the names of merchandise, or any other colourable appellation, in the ship's papers? If yea, what are the marks of the casks, bales, and packages in which the same are concealed? Were any of the

before-named articles, and which, intended for the use of any fortress or garrison in the port or place to which such ship was bound? If nay, to whose use, and for what place, were the same, or any and which of them, really destined or intended? Do you know, or have you heard of, any ordinance, notice, or law, existing in the kingdom or state from which the voyage began, or where they were shipped, forbidding the exportation of the same by private persons? Were such warlike or naval stores put on board by any, and what public authority? When, and where, and by whom, were they put on board?

33. What is the whole which you know or believe regarding the real and true property and destination at the time of the capture of the ship and cargo concerning which you are now examined?

34. Did the said ship on the voyage in which she was captured, or during any and what former voyage, sail under the convoy of any and what ship or ships of war, and other armed vessel or vessels? And if yea, for what reason did she sail under such convoy? Of what force was or were such convoying ship or ships? And to what state did they belong? What instructions or directions did you receive on each and every such voyage, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships? and from whom did you receive such instructions or directions? And from whom did you receive any instructions for resisting, or endeavouring to avoid, or escape from capture; or for destroying, or concealing, or refusing to deliver up your ship's documents or papers, or any and what other papers that might be, or had been put on board your vessel? If you had any such instructions, state their tenor and all particulars relating thereto. Ask the witness if he is in possession of such instructions or copies thereof; and if he be, direct him to leave the same with the examiner, to be annexed to his deposition.

35. Did the said ship during the voyage in which she was captured, or on or during any and what former voyage, sail to, or attempt to enter or leave, any port, place, river, or coast which was under blockade by the arms or forces of any, and which of the belligerent powers? If yea, when, where, and how did you first hear of such port, place, river, or coast being so blockaded? And were you at any, and what time? And if yea, by whom and where warned not to proceed to, or not to attempt to enter, or to leave such blockaded port, place, river, or coast? What conversation or other communication passed between you and your informant in respect thereto? And what course did you pursue upon, and after such warning?

36. What instructions did you or did any, and what other, person on board receive, and from whom, and when, with respect to any and what blockade which there was, or might thereafter be, established? Or will you swear that you never received and do not know or believe that any other person on board received any instructions whatsoever in respect to any blockade which was or might be established of any port, place, or coast?

FORM No. 14 (referred to in Sect. 219).

Declaration of Blockade.

I hereby declare, that on the _____ day of _____ last the _____, from _____, in latitude _____, longitude _____, to _____ in latitude _____, longitude _____, were placed in a state of Blockade by a competent force of Her Majesty's Ships, and are now in such state of Blockade ; and that all measures authorised by the Law of Nations and the respective Treaties between Her Majesty and the different Neutral Powers, will be enforced on behalf of Her Majesty against all Vessels which may attempt to violate the Blockade.

Given on board Her Majesty's Ship _____,
at _____, this _____ day of _____,
18_____.

Signed _____

Rear-Admiral and Commander-in-Chief of Her
Britannic Majesty's Naval Force in _____

FORM No. 15 (referred to in Sect. 221).

Letter accompanying Declaration of Blockade.

To His Excellency_____, Her Britannic Majesty's
1 or Consul
or Chargé
d'Affaires. Envoy Extraordinary¹ at_____.

Here insert
the name of
the State at
the Court of
which the
Envoy re-
sides.

SIR,—I have the honour to send to your Excellency
the enclosed Declaration, and to request that it may be
forthwith duly notified to the Government of the_____,
of_____and to the Foreign Ministers, Consuls,
Vice-Consuls, and Consular Agents residing in the same
kingdom.

I am, your obedient servant,

Rear-Admiral and Commander-in-Chief of
Her Britannic Majesty's Naval Forces
in_____.

The_____day of_____, 18____,
at_____.

FORM No. 16 (referred to in Sect. 243).

Warning of Blockade.

The _____ Vessel, the _____, has been this
day visited by me, and warned that _____ is
under Blockade.

Dated this _____ day of _____, 18____.

Latitude _____, longitude _____.

Commanding Her Majesty's Ship _____

APPENDIX.

I. *An Act for regulating Naval Prize of War.*

27 & 28 VIC, cap. xxv. 23d June 1864.

WHEREAS it is expedient to enact permanently, with amendments, such Provisions concerning Naval Prize, and matters connected therewith, as have heretofore been usually passed at the beginning of a War :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short Title.
Interpreta-
tion of
Terms.

1. This Act may be cited as the Naval Prize Act, 1864.

2. In this Act—

The term "The Lords of the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral :

The term "The High Court of Admiralty" means the High Court of Admiralty of *England* :

The term "Any of Her Majesty's Ships of War" includes any of Her Majesty's vessels of war, and any hired armed ship or vessel in Her Majesty's service :

The term "Officers and Crew" includes Flag Officers, Commanders, and other Officers, Engineers, Seamen, Marines, Soldiers, and others on board any of Her Majesty's ships of war :

The term "Ship" includes Vessel and Boat, with the Tackle, Furniture, and Apparel of the Ship, Vessel, or Boat :

The term "Ship Papers" includes all Books, Passes, Sea Briefs, Charter Parties, Bills of Lading, Cockets, Letters, and other Documents and Writings delivered up or found on board a captured ship :

The term "Goods" includes all such things as are by the course of Admiralty and law of nations the subject of adjudication as Prize (other than Ships).

I.—PRIZE COURTS.

High Court
of Admiralty
and other
Courts to be
Prize Courts
for purposes
of Act.

3. The High Court of Admiralty, and every Court of Admiralty or of Vice-Admiralty, or other Court exercising Admiralty jurisdiction in Her Majesty's dominions, for the time being authorised to take cognisance of and judicially proceed in matters of Prize, shall be a Prize Court within the meaning of this Act.

Every such Court, other than the High Court of Admiralty, is comprised in the term "Vice-Admiralty Prize Court," when hereafter used in this Act.

High Court of Admiralty.

4. The High Court of Admiralty shall have jurisdiction throughout Her Majesty's dominions as a Prize Court. Jurisdiction of High Court of Admiralty.

The High Court of Admiralty as a Prize Court shall have power to enforce any order or decree of a Vice-Admiralty Prize Court, and any order or decree of the Judicial Committee of the Privy Council in a Prize Appeal.

Appeal; Judicial Committee.

5. An Appeal shall lie to Her Majesty in Council from any order or decree of a Prize Court, as of right in case of a final decree, and in other cases with the leave of the Court making the order or decree. Appeal to Queen in Council, in what Cases.

Every Appeal shall be made in such manner and form, and subject to such regulations (including regulations as to fees, costs, charges, and expenses), as may for the time being be directed by Order in Council, and in the absence of any such Order, or so far as any such Order does not extend, then in such manner and form and subject to such regulations as are for the time being prescribed or in force respecting Maritime Causes of Appeal.

6. The Judicial Committee of the Privy Council shall have jurisdiction to hear and report on any such Appeal, and may therein exercise all such powers as for the time being appertain to them in respect of Appeals from any Court of Admiralty jurisdiction, and all such powers as are under this Act vested in the High Court of Admiralty, and all such powers as were wont to be exercised by the Commissioners of Appeal in Prize causes. Jurisdiction of Judicial Committee in Prize Appeals.

7. All processes and documents required for the purposes of any such Appeal shall be transmitted to and shall remain in the custody of the Registrar of Her Majesty in Prize Appeals. Custody of Processes, Papers, &c.

8. In every such Appeal the usual inhibition shall be extracted from the Registry of Her Majesty in Prize Appeals within three months after the date of the order or decree appealed from if the Appeal be from the High Court of Admiralty, and within six months after that date if it be from a Vice-Admiralty Prize Court. Limit of Time for Appeal.

The Judicial Committee may nevertheless, on sufficient cause shown, allow the inhibition to be extracted and the appeal to be prosecuted after the expiration of the respective periods aforesaid.

Vice-Admiralty Prize Courts.

9. Every Vice-Admiralty Prize Court shall enforce within its jurisdiction all orders and decrees of the Judicial Committee in Prize Appeals and of the High Court of Admiralty in Prize Causes. Enforcement of Orders of High Court, &c.

10. Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court a Salary not exceeding Five-hundred Pounds a-year, payable out of money provided by Parliament, subject to such regulations as seem meet. Salaries of Judges of Vice-Admiralty Prize Courts.

A Judge to whom a Salary is so granted shall not be entitled to any further emolument, arising from fees or otherwise, in respect of Prize business transacted in his Court.

An account of all such fees shall be kept by the Registrar of the Court, and the amount thereof shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Retiring
Pensions of
Judges, as in
22 & 23 Vict.
c. 26.

11. In accordance, as far as circumstances admit, with the principles and regulations laid down in the Superannuation Act, 1859, Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court an annual or other Allowance, to take effect on the termination of his service, and to be payable out of money provided by Parliament.

Returns
from Vice-
Admiralty
Prize Courts.

12. The Registrar of every Vice-Admiralty Prize Court shall, on the first day of *January* and first day of *July* in every year, make out a Return (in such form as the Lords of the Admiralty from time to time direct) of all Cases adjudged in the Court since the last half-yearly Return, and shall with all convenient speed send the same to the Registrar of the High Court of Admiralty, who shall keep the same in the Registry of that Court, and who shall, as soon as conveniently may be, send a Copy of the Returns of each Half Year to the Lords of the Admiralty, who shall lay the same before both Houses of Parliament.

General.

General
Orders for
Prize Courts.

13. The Judicial Committee of the Privy Council, with the Judge of the High Court of Admiralty, may from time to time frame General Orders for regulating (subject to the provisions of this Act) the procedure and practice of Prize Courts, and the duties and conduct of the Officers thereof and of the Practitioners therein, and for regulating the fees to be taken by the Officers of the Courts, and the costs, charges, and expenses to be allowed to the Practitioners therein.

Any such General Orders shall have full effect, if and when approved by Her Majesty in Council, but not sooner or otherwise.

Every Order in Council made under this Section shall be laid before both Houses of Parliament.

Every such Order in Council shall be kept exhibited in a conspicuous place in each Court to which it relates.

Prohibition
of Officer of
Prize Court
acting as
Proctor, &c.

14. It shall not be lawful for any Registrar, Marshal, or other Officer of any Prize Court, or for the Registrar of Her Majesty in Prize Appeals, directly or indirectly to act or be in any manner concerned as Advocate, Proctor, Solicitor, or Agent, or otherwise, in any Prize Cause or Appeal, on pain of dismissal or suspension from office, by order of the Court or of the Judicial Committee (as the case may require).

Prohibition
of Proctors
being con-
cerned for
adverse
parties in a
cause.

15. It shall not be lawful for any Proctor or Solicitor, or person practising as a Proctor or Solicitor, being employed by a party in a Prize Cause or Appeal, to be employed or concerned, by himself or his partner, or by any other person, directly or indirectly, by or on behalf of any adverse party in that Cause or Appeal, on pain of exclusion or suspension from practice in Prize matters, by order of the Court or of the Judicial Committee (as the case may require).

II.—PROCEDURE IN PRIZE CAUSES.

Proceedings by Captors.

16. Every Ship taken as Prize, and brought into port within the jurisdiction of a Prize Court, shall forthwith, and without bulk broken, be delivered up to the Marshal of the Court. Custody of Prize Ship.

If there is no such Marshal, then the Ship shall be in like manner delivered up to the principal Officer of Customs at the Port.

The Ship shall remain in the custody of the Marshal, or of such Officer, subject to the orders of the Court.

17. The Captors shall, with all practicable speed after the Ship is brought into port, bring the Ship Papers into the Registry of the Court. Bringing in of Ship Papers.

The Officer in Command, or one of the Chief Officers of the capturing Ship, or some other person who was present at the Capture, and saw the Ship Papers delivered up or found on board, shall make oath that they are brought in as they were taken, without fraud, addition, subduction, or alteration, or else shall account on oath to the satisfaction of the Court for the absence or altered condition of the Ship Papers or any of them.

Where no Ship Papers are delivered up or found on board the captured Ship, the Officer in Command, or one of the Chief Officers of the capturing Ship, or some other person who was present at the Capture, shall make oath to that effect.

18. As soon as the Affidavit as to Ship Papers is filed, a Monition shall issue, returnable within twenty days from the service thereof, citing all persons in general to show cause why the captured Ship should not be condemned. Issue of Monition.

19. The Captors shall, with all practicable speed after the captured Ship is brought into Port, bring three or four of the principal persons belonging to the captured Ship before the Judge of the Court or some person authorised in this behalf, by whom they shall be examined on oath on the standing interrogatories. Examinations on Standing Interrogatories.

The Preparatory Examinations on the Standing Interrogatories shall, if possible, be concluded within five days from the commencement thereof.

20. After the return of the Monition, the Court shall, on production of the Preparatory Examinations and Ship Papers, proceed with all convenient speed either to condemn or to release the captured Ship. Adjudication by Court.

21. Where, on production of the Preparatory Examinations and Ship Papers, it appears to the Court doubtful whether the captured Ship is good Prize or not, the Court may direct further proof to be adduced, either by Affidavit or by Examination of Witnesses, with or without pleadings, or by production of further documents; and on such further proof being adduced the Court shall with all convenient speed proceed to adjudication. Further proof.

22. The foregoing provisions, as far as they relate to the custody of the Ship, and to Examination on the Standing Interrogatories, shall not apply to Ships of War taken as Prize. Custody, &c. of Ships of War.

Claim.

Entry of
Claim ;
Security for
Costs.

23. At any time before final decree made in the Cause, any person claiming an interest in the Ship may enter in the Registry of the Court a Claim, verified on oath.

Within five days after entering the Claim, the claimant shall give security for costs in the sum of sixty pounds; but the Court shall have power to enlarge the time for giving security, or to direct security to be given in a larger sum, if the circumstances appear to require it.

Appraisement.

Power to
Court to
direct
Appraise-
ment.

24. The Court may, if it thinks fit, at any time direct that the captured Ship be appraised.

Every appraisement shall be made by competent persons sworn to make the same according to the best of their skill and knowledge.

Delivery on Bail.

Power to
Court to
direct De-
livery to
Claimant on
Bail.

25. After appraisement, the Court may, if it thinks fit, direct that the captured Ship be delivered up to the claimant, on his giving security to the satisfaction of the Court to pay to the captors the appraised value thereof in case of condemnation.

Sale.

Power to
Court to
order Sale.

26. The Court may at any time, if it thinks fit, on account of the condition of the captured Ship, or on the application of a claimant, order that the captured Ship be appraised as aforesaid (if not already appraised), and be sold.

Sale on Con-
demnation.

27. On or after condemnation the Court may, if it thinks fit, order that the Ship be appraised as aforesaid (if not already appraised), and be sold.

How Sales
to be made.

28. Every sale shall be made by or under the superintendence of the Marshal of the Court or of the Officer having the custody of the captured Ship.

Payment of
Proceeds to
Paymaster
General or
Official Ac-
countant.

29. The proceeds of any sale, made either before or after condemnation, and after condemnation the appraised value of the captured Ship, in case she has been delivered up to a claimant on bail, shall be paid under an order of the Court either into the Bank of *England* to the credit of Her Majesty's Paymaster General, or into the hands of an official Accountant (belonging to the Commissariat or some other department) appointed for this purpose by the Commissioners of Her Majesty's Treasury or by the Lords of the Admiralty, subject in either case to such regulations as may from time to time be made, by Order in Council, as to the custody and disposal of money so paid.

Small Armed Ships.

One Adju-
dication as
to several
small Ships.

30. The Captors may include in one adjudication any number, not exceeding six, or armed Ships not exceeding one hundred tons

each, taken within three months next before institution of proceedings.

Goods.

31. The foregoing provisions relating to Ships shall extend and apply, *mutatis mutandis*, to goods taken as Prize on board Ship; and the Court may direct such Goods to be unladen, inventoried, and warehoused.

Application of foregoing Provisions to Prize Goods.

Monition to Captors to proceed.

32. If the Captors fail to institute or to prosecute with effect proceedings for adjudication, a Monition shall, on the application of a claimant, issue against the Captors, returnable within six days from the service thereof, citing them to appear and proceed to Adjudication; and on the return thereof the Court shall either forthwith proceed to adjudication or direct further proof to be adduced as aforesaid, and then proceed to adjudication.

Power to Court to call on Captors to proceed to Adjudication.

Claim on Appeal.

33. Where any person, not an original party in the cause, intervenes on Appeal, he shall enter a claim, verified on oath, and shall give security for costs.

Person intervening on Appeal to enter Claim.

III.—SPECIAL CASES OF CAPTURE.

Land Expeditions.

34. Where, in an expedition of any of Her Majesty's naval or naval and military forces against a fortress or possession on land, goods belonging to the state of the Enemy or to a public trading company of the Enemy exercising powers of Government are taken in the fortress or possession, or a Ship is taken in waters defended by or belonging to the fortress or possession, a Prize Court shall have jurisdiction as to the goods or Ship so taken, and any goods taken on board the Ship, as in case of Prize.

Jurisdiction of Prize Court in case of Capture in Land Expedition.

Conjunct Capture with Ally.

35. Where any Ship or goods is or are taken by any of Her Majesty's naval or naval and military forces while acting in conjunction with any forces of any of Her Majesty's Allies, a Prize Court shall have jurisdiction as to the same as in case of Prize, and shall have power, after condemnation, to apportion the due share of the proceeds to Her Majesty's Ally, the proportionate amount and the disposition of which share shall be such as may from time to time be agreed between Her Majesty and Her Majesty's Ally.

Jurisdiction of Prize Court in case of Expedition with Ally.

Joint Capture.

36. Before condemnation, a Petition on behalf of asserted joint Captors shall not (except by special leave of the Court) be admitted, unless and until they give security to the satisfaction of the Court

Restriction on Petitions by asserted joint Captors.

to contribute to the actual Captors a just proportion of any costs, charges, or expenses or damages that may be incurred by or awarded against the actual Captors on account of the capture and detention of the Prize.

After condemnation, such a Petition shall not (except by special leave of the Court) be admitted unless and until the asserted joint Captors pay to the actual Captors a just proportion of the costs, charges, and expenses incurred by the actual Captors in the case, and give such security as aforesaid, and show sufficient cause to the Court why their Petition was not presented before condemnation.

Provided, that nothing in the present Section shall extend to the asserted interest of a Flag Officer claiming to share by virtue of his flag.

Offences against Law of Prize.

In case of
Offence by
Captors,
Prize to be
reserved for
Crown.

37. A Prize Court, on proof of any offence against the Law of Nations, or against this Act, or any Act relating to Naval Discipline, or against any Order in Council or Royal Proclamation, or of any breach of Her Majesty's instructions relating to Prize, or of any act of disobedience to the orders of the Lords of the Admiralty, or to the command of a Superior Officer, committed by the Captors in relation to any Ship or goods taken as Prize, or in relation to any person on board any such Ship, may on condemnation, reserve the Prize to Her Majesty's disposal, notwithstanding any grant that may have been made by Her Majesty in favour of Captors.

Pre-emption

Purchase by
Admiralty
for Public
Service of
Stores on
board Fo-
reign Ships.

38. Where a Ship of a foreign nation passing the seas laden with naval or victualling stores intended to be carried to a port of any Enemy of Her Majesty is taken and brought into a port of the United Kingdom, and the purchase for the service of Her Majesty of the stores on board the Ship appears to the Lords of the Admiralty expedient without the condemnation thereof in a Prize Court, in that case the Lords of the Admiralty may purchase, on the account or for the service of Her Majesty, all or any of the stores on board the Ship; and the Commissioners of Customs may permit the stores purchased to be entered and landed within any port.

Capture by Ship other than a Ship of War.

Prizes taken
by Ships
other than
Ships of
War to be
Droits of
Admiralty.

39. Any Ship or goods taken as Prize by any of the Officers and Crew of a Ship other than a Ship of War of Her Majesty shall, on condemnation, belong to Her Majesty in Her Office of Admiralty.

IV.—PRIZE SALVAGE.

Salvage to
re-captors of
British Ship
or goods
from Enemy.

40. Where any Ship or goods belonging to any of Her Majesty's subjects, after being taken as Prize by the Enemy, is or are retaken from the Enemy by any of Her Majesty's Ships of War, the same

shall be restored by decree of a Prize Court to the Owner, on his paying as Prize Salvage one eighth part of the value of the Prize to be decreed and ascertained by the Court, or such sum not exceeding one eighth part of the estimated value of the Prize as may be agreed on between the Owner and the Re-captors, and approved by Order of the Court; Provided, that where the re-capture is made under circumstances of special difficulty or danger, the Prize Court may, if it thinks fit, award to the Re-captors as Prize Salvage a larger part than one eighth part, but not exceeding in any case one fourth part of the value of the Prize.

Provided also, that where a Ship after being so taken is set forth or used by any of Her Majesty's Enemies as a Ship of War, this provision for Restitution shall not apply, and the Ship shall be adjudicated on as in other cases of Prize.

41. Where a Ship belonging to any of Her Majesty's subjects, after being taken as Prize by the Enemy, is retaken from the Enemy by any of Her Majesty's Ships of War, she may, with the consent of the Re-captors, prosecute her voyage, and it shall not be necessary for the Re-captors to proceed to adjudication till her return to a port of the United Kingdom.

Permission to re-captured Ship to proceed on Voyage.

The Master or Owner, or his Agent, may, with the consent of the Re-captors, unload and dispose of the Goods on board the Ship before adjudication.

In case the Ship does not, within six months, return to a port of the United Kingdom, the Re-captors may nevertheless institute proceedings against the Ship or goods in the High Court of Admiralty, and the Court may thereupon award Prize Salvage as aforesaid to the Re-captors, and may enforce payment thereof, either by Warrant of Arrest against the Ship or goods, or by Monition and Attachment against the Owner.

V.—PRIZE BOUNTY.

42. If, in relation to any War, Her Majesty is pleased to declare, by Proclamation or Order in Council, her intention to grant Prize Bounty to the Officers and Crews of Her Ships of War, then such of the Officers and Crew of any of Her Majesty's Ships of War as are actually present at the taking or destroying of any armed Ship of any of Her Majesty's Enemies shall be entitled to have distributed among them as Prize Bounty a sum calculated at the rate of Five Pounds for each person on board the Enemy's Ship at the beginning of the engagement.

Prize Bounty to Officers and Crew present at Engagement with an Enemy.

43. The number of the persons so on board the Enemy's Ship shall be proved in a Prize Court, either by the examinations on oath of the survivors of them, or of any three or more of the survivors, or if there is no survivor by the Papers of the Enemy's Ship, or by the examinations on oath of three or more of the Officers and Crew of Her Majesty's Ship, or by such other evidence as may seem to the Court sufficient in the circumstances.

Ascertainment of Amount of Prize Bounty by Decree of Prize Court.

The Court shall make a Decree declaring the title of the Officers and Crew of Her Majesty's Ship to the Prize Bounty, and stating the amount thereof.

The decree shall be subject to Appeal as other decrees of the Court.

Payment
of Prize
Bounty
awarded.

44. On production of an official copy of the decree the Commissioners of Her Majesty's Treasury shall, out of money provided by Parliament, pay the amount of Prize Bounty decreed, in such manner as any Order in Council may from time to time direct.

VI.—MISCELLANEOUS PROVISIONS.

Ransom.

Power for
regulating
ransom
by Order
in Council.

45. Her Majesty in Council may from time to time, in relation to any War, make such Orders as may seem expedient, according to circumstances, for prohibiting or allowing, wholly or in certain cases, or subject to any conditions or regulations or otherwise, as may from time to time seem meet, the ransoming or the entering into any contract or agreement for the ransoming of any Ship or goods belonging to any of Her Majesty's subjects, and taken as Prize by any of Her Majesty's Enemies.

Any contract or agreement entered into, and any bill, bond, or other security given for ransom of any Ship or goods, shall be under the exclusive jurisdiction of the High Court of Admiralty as a Prize Court (subject to Appeal to the Judicial Committee of the Privy Council), and if entered into or given in contravention of any such Order in Council shall be deemed to have been entered into or given for an illegal consideration.

If any person ransoms or enters into any contract or agreement for ransoming any Ship or goods, in contravention of any such Order in Council, he shall for every such offence be liable to be proceeded against in the High Court of Admiralty at the suit of Her Majesty in her office of Admiralty, and on conviction to be fined, in the discretion of the Court, any sum not exceeding Five-hundred Pounds.

Convoy.

Punishment
of Masters of
Merchant
Vessels un-
der Convoy
disobeying
Orders or
deserting
Convoy.

46. If the Master or other person having the command of any Ship of any of Her Majesty's subjects, under the convoy of any of Her Majesty's Ships of War, wilfully disobeys any lawful signal, instruction, or command of the Commander of the Convoy, or without leave deserts the convoy, he shall be liable to be proceeded against in the High Court of Admiralty at the suit of Her Majesty in her office of Admiralty, and upon conviction to be fined, in the discretion of the Court, any sum not exceeding Five-hundred Pounds, and to suffer imprisonment for such time, not exceeding One Year, as the Court may adjudge.

Customs Duties and Regulations.

Prize Ships
and goods
liable to
Duties and
Forfeiture.

47. All Ships and goods taken as Prize and brought into a port of the United Kingdom shall be liable to and be charged with the same rates and charges and duties of Customs as under any Act

relating to the Customs may be chargeable on other Ships and Goods of the like description; and

All goods brought in as Prize which would on the voluntary importation thereof be liable to forfeiture or subject to any restriction under the Laws relating to the Customs, shall be deemed to be so liable and subject, unless the Commissioners of Customs see fit to authorise the sale or delivery thereof for home use or exportation, unconditionally or subject to such conditions and regulations as they may direct.

48. Where any Ship or goods taken as Prize is or are brought into a port of the United Kingdom, the Master or other person in charge or command of the Ship which has been taken or in which the goods are brought shall, on arrival at such port, bring to at the proper place of discharge, and shall, when required by any Officer of Customs, deliver an account in writing under his hand concerning such Ship and goods, giving such particulars relating thereto as may be in his power, and shall truly answer all questions concerning such Ship or goods asked by any such Officer, and in default shall forfeit a sum not exceeding One-hundred Pounds, such forfeiture to be enforced as forfeitures for offences against the Laws relating to the Customs are enforced, and every such Ship shall be liable to such searches as other Ships are liable to, and the Officers of the Customs may freely go on board such Ship and bring to the Queen's warehouse any goods on board the same, subject, nevertheless, to such regulations in respect of Ships of War belonging to Her Majesty as shall from time to time be issued by the Commissioners of Her Majesty's Treasury.

Regulations of Customs to be observed as to Prize Ships and goods.

49. Goods taken as Prize may be sold either for home consumption or for exportation: and if in the former case the proceeds thereof, after payment of duties of Customs, are insufficient to satisfy the just and reasonable claims thereon, the Commissioners of Her Majesty's Treasury may remit the whole or such part of the said duties as they see fit.

Power for Treasury to remit Customs duties in certain cases.

Perjury.

50. If any person wilfully and corruptly swears, declares, or affirms falsely in any Prize Cause or Appeal, or in any proceeding under this Act, or in respect of any matter required by this Act to be verified on oath, or suborns any other person to do so, he shall be deemed guilty of perjury, or of subornation of perjury (as the case may be), and shall be liable to be punished accordingly.

Punishment of persons guilty of perjury.

Limitation of Actions, &c.

51. Any action or proceeding shall not lie in any part of Her Majesty's dominions against any person acting under the authority or in the execution or intended execution or in pursuance of this Act for any alleged irregularity or trespass, or other act or thing done or omitted by him under this Act, unless notice in writing (specifying the cause of the action or proceeding) is given by the intending plaintiff or prosecutor to the intended defendant one month at

Actions against persons executing Act not to be brought without notice, &c.

least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within six months next after the act or thing complained of is done or omitted, or, in case of a continuation of damage, within six months next after the doing of such damage has ceased.

In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him when acting under the authority or in the execution or intended execution or in pursuance of this Act, and may give all special matter in evidence; and the plaintiff shall not succeed if tender of sufficient amends is made by the defendant before the commencement of the action; and in case no tender has been made, the defendant may, by leave of the Court in which the action is brought, at any time pay into Court such sum of money as he thinks fit, whereupon such proceeding and order shall be had and made in and by the Court as may be had and made on the payment of money into Court in an ordinary action; and if the plaintiff does not succeed in the action, the defendant shall receive such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about the action as may be taxed and allowed by the proper officer, subject to review; and though a verdict is given for the plaintiff in the action he shall not have costs against the defendant, unless the judge before whom the trial is had certifies his approval of the action.

Any such action or proceeding against any person in Her Majesty's Naval Service, or in the employment of the Lords of the Admiralty, shall not be brought or instituted elsewhere than in the United Kingdom.

Petitions of Right.

Jurisdiction
of High
Court of
Admiralty
on Petitions
of Right
in certain
cases, as in
23 & 24 Vict.
c. 34.

52. A Petition of Right, under the Petitions of Right Act, 1860, may, if the suppliant thinks fit, be intituled in the High Court of Admiralty, in case the subject matter of the petition or any material part thereof arises out of the exercise of any belligerent right on behalf of the Crown, or would be cognisable in a Prize Court within Her Majesty's dominions if the same were a matter in dispute between private persons.

Any Petition of Right under the last-mentioned Act, whether intituled in the High Court of Admiralty or not, may be prosecuted in that Court, if the Lord Chancellor thinks fit so to direct.

The provisions of this Act relative to Appeal, and to the framing and approval of General Orders for regulating the procedure and practice of the High Court of Admiralty, shall extend to the case of any such Petition of Right intituled or directed to be prosecuted in that Court; and, subject thereto, all the provisions of the Petitions of Right Act, 1860, shall apply, *mutatis mutandis*, in the case of any such Petition of Right; and for the purposes of the present section the terms "Court" and "Judge" in that Act shall respectively be understood to include and to mean the High Court of Admiralty and the Judge thereof, and other terms shall have the respective meanings given to them in that Act.

Orders in Council.

53. Her Majesty in Council may from time to time make such Orders in Council as seem meet for the better execution of this Act. Power to make Orders in Council.

54. Every Order in Council under this Act shall be published in the *London Gazette*, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and, if not, then within thirty days after the next meeting of Parliament. Order in Council to be gazetted, &c.

Savings.

55. Nothing in this Act shall—

- (1.) give to the Officers and Crew of any of Her Majesty's Ships of War any right or claim in or to any Ship or goods taken as Prize or the proceeds thereof, it being the intent of this Act that such Officers and Crews shall continue to take only such interest (if any) in the proceeds of Prizes as may be from time to time granted to them by the Crown; or
- (2.) affect the operation of any existing treaty or convention with any Foreign Power; or
- (3.) take away or abridge the power of the Crown to enter into any treaty or convention with any Foreign Power containing any stipulation that may seem meet concerning any matter to which this Act relates; or
- (4.) take away, abridge, or control, further or otherwise than as expressly provided by this Act, any right, power, or prerogative of Her Majesty the Queen in right of her Crown, or in right of her office of Admiralty, or any right or power of the Lord High Admiral of the United Kingdom, or of the Commissioners for executing the Office of Lord High Admiral; or
- (5.) take away, abridge, or control, further or otherwise than as expressly provided by this Act, the jurisdiction or authority of a Prize Court to take cognisance of and judicially proceed upon any capture, seizure, prize, or reprisal of any Ship or Goods, and to hear and determine the same, and, according to the course of Admiralty and the Law of Nations, to adjudge and condemn any Ship or goods, or any other jurisdiction or authority of or exercisable by a Prize Court.

Not to affect rights of Crown; Effect of treaties, &c.

Commencement.

56. This Act shall commence on the commencement of The Naval Agency and Distribution Act, 1864. Commencement of Act.

II. *An Act to make Provision for the Discipline of the Navy.*

29 & 30 VIC. cap. cix. 10TH AUGUST 1866.

WHEREAS it is expedient to amend the law relating to the government of the Navy, whereon, under the good providence of God, the wealth, safety, and strength of the kingdom chiefly depend :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Penalty for not sending to the Court of Admiralty all Papers found aboard Prize Ships.

38. All the Papers, Charter-parties, Bills of Lading, Passports, and other Writings whatsoever that shall be taken, seized, or found aboard any Ship or Ships which shall be taken as Prize shall be duly preserved, and the Commanding Officer of the Ship which shall take such Prize shall send the Originals entire and without fraud to the Court of Admiralty, or such other Court or Commissioners as shall be authorised to determine whether such Prize be lawful capture, there to be viewed, made use of, and proceeded upon according to law, upon pain that every person offending herein shall be dismissed from Her Majesty's service, or shall suffer such other punishment as is hereinafter mentioned, and in addition thereto shall forfeit and lose his share of the capture.

Penalty for taking money or other effects out of any Prize before the same shall be condemned.

39. No person subject to this Act shall take out of any Prize or Ship seized for Prize any money, plate, or goods, unless it shall be necessary for the better securing thereof, or for the necessary use and service of any of Her Majesty's Ships and Vessels of War, before the same be adjudged lawful Prize in some Admiralty Court; but the full and entire account of the whole without embezzlement shall be brought in, and judgment passed entirely upon the whole, without fraud, upon pain that every person offending herein shall be dismissed from Her Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned, and in addition thereto forfeit and lose his share of the Capture.

Penalty for stripping or ill-using persons taken on board a Prize.

40. If any Ship or Vessel shall be taken as Prize, none of the Officers, Mariners, or other persons on board her shall be stripped of their clothes, or in any sort pillaged, beaten, or evil intreated, upon pain that the person or persons so offending shall be dismissed from Her Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

Penalty on Commanders capturing as Prize by collusion, or collusively restoring Ships or Goods.

41. If the Commanding Officer of any of Her Majesty's Ships does any of the following things—namely,

- (1.) By collusion with the Enemy takes as Prize any Vessel, goods, or thing;
- (2.) Unlawfully agrees with any person for the ransoming of any Vessel, goods, or thing taken as Prize; or
- (3.) In pursuance of any unlawful agreement for ransoming or

otherwise by collusion actually quits or restores any Vessel, goods, or thing taken as Prize; he shall be liable to dismissal from Her Majesty's service, with disgrace, or to such other punishment as is hereinafter mentioned.

42. If any person subject to this Act breaks bulk on board any Vessel taken as Prize, or detained in the exercise of any belligerent right, or under any Act relating to piracy or to the slave-trade or to the Customs, with intent to embezzle any thing therein or belonging thereto, he shall be liable to dismissal from Her Majesty's service, with disgrace, or to such other punishment as is hereinafter mentioned, and in addition thereto to forfeit and lose his share of the Capture.

Penalty for
breaking
bulk on
board Prize
Ship with
a view to
embezzle-
ment.

III. *Royal Proclamation as to Distribution of Prize Money, May 19, 1866.*

By the Queen.

A PROCLAMATION.

VICTORIA R.

WHEREAS by Our Order in Council of this Day's Date We were graciously pleased to annul, from and after the Thirtieth Day of *September* next, Our Royal Proclamation of the Twenty-ninth Day of *June* One thousand eight hundred and sixty-five, regulating, according to the Scheme set forth therein or recognised thereby, the Distribution of the net Proceeds of Prizes captured from the Enemy, of Captures and Seizures under the several Acts of Parliament passed relating to the Revenues of Customs, and to Trade and Navigation, for the Abolition of the Slave Trade, for the Capture and Destruction of Pirates and Piratical Vessels, and of the Rewards conferred for the same, as also of the Awards for all Salvage granted to the Crews of Our Ships and Vessels of War, when not otherwise specially apportioned by the Terms of the respective Awards and Allowances, and in consequence of certain Alterations in the Apportionment and Classification of the Shares being desirable it is expedient that Provision should be made for the future Distribution of such net Proceeds and Salvage not otherwise specially apportioned, and all other Moneys whatsoever granted to be shared among the Officers and Crews of Our Ships and Vessels in the Manner of Prize Money.

We do, therefore, now make known to all Our loving Subjects, and to all others whom it may concern, by this Our Proclamation, by and with the Advice and Consent of Our Privy Council, that Our Royal Will and Pleasure is, and We do hereby direct, That Ships or Vessels being in sight of a Prize, as also of the Captor, under Circumstances to cause Intimidation to the Prize and Encouragement to the Captor, shall be alone entitled to share as joint Captors, and that the Distribution of all such net Proceeds of Prizes, Rewards, Allowances, Salvage Awards, and of all Bounties and Grants whatsoever distributable to Our Royal Navy in the Manner of Prize Money, shall be made as follows; videlicet,—

That the Flag Officer or Officers shall have One Thirtieth Part of the whole net Proceeds arising from Prizes captured from the Enemy, and from all other Captures and Seizures, &c. as aforesaid, made by any of the Ships or Vessels under his or their Command, and of the Rewards conferred for

the same, according to the following Conditions and Modifications, save and except as hereinafter provided and directed; that is to say,

When there is but One Flag Officer he shall have the entire One Thirtieth Part; when Two Flag Officers shall be sharing together, the Chief shall have Two Thirds, and the other Flag Officer shall have the remaining One Third of the One Thirtieth Part; and when there shall be more than Two Flag Officers, the Chief shall have One Half of the said One Thirtieth Part, and the remaining Half shall be equally divided among the junior Flag Officers; Commodores of the First Class and Captains of the Fleet to share as Flag Officers: Provided always, that no Flag Officer, unless actually on board any of Our Ships or Vessels of War, and at the actual taking, sinking, burning, or otherwise destroying any Ship or Ships of War, Privateer or Privateers belonging to the Enemy, shall share in the Distribution of any Head Money or Bounty Money granted as a Reward for the taking, sinking, burning, or otherwise destroying any such Ship or Vessel of the Enemy.

That no Flag Officer, unless actually present at the Capture or Destruction of any Pirates or Piratical Ship, Vessel, or Boat, shall share in any Distribution of the Proceeds or Bounty in respect of such Pirates, or of the Crews of such Piratical Ship, Vessel, or Boat.

That no Flag Officer shall share in any Remuneration or Reward conferred or awarded to the Crew of any of Our Ships or Vessels as Salvage, unless he shall have been actually on board the Ship or Vessel to which the Award shall be made, or have personally aided and assisted in the Transaction at the Time the Service was rendered.

That no Flag Officer commanding in any Port in the United Kingdom shall share in the Proceeds of any Prize captured from the Enemy, or in other Captures, Seizures, Rewards, or any distributive Proceeds as aforesaid, made by any Ships or Vessels which shall sail from or leave such Port by Order of the Lord High Admiral, or of Our Commissioners for executing the Office of Lord High Admiral.

That when Ships or Vessels under the Command of several Flag Officers belonging to separate Stations shall be joint Captors, &c., each Flag Officer shall receive a Proportion of the One Thirtieth Part, according to the Number of Officers and Men present under the Command of each such Flag Officer; and when Ships or Vessels under Orders from the Lord High Admiral, or from Our Commissioners for executing the Office of Lord High Admiral, are joint Captors, &c. with other Ships or Vessels under a Flag or Flags, the like Regulations as to the Apportionment of the Flag Share to the Flag Officer or Officers are to be observed.

With reference to Flag Officers it is to be noted,—

That when an inferior Flag Officer is sent to reinforce a superior Officer on any Station, the superior Flag Officer shall not share in any Prize taken by the inferior Flag Officer before he has arrived within the Limits of that Station, unless the inferior Officer shall have received some Order directly from, and shall be acting in execution of some Order issued by such superior Flag Officer.

No chief Flag Officer quitting any Station, except upon some definite urgent Service, and with the Intention of returning to the Station as soon as such Service is performed, shall share in any Prize taken by Our Ships or Vessels left behind after he has passed the Limits of the Station, or after he has surrendered the Command to another Flag Officer appointed by the Admiralty to command in chief upon such Station.

An inferior Flag Officer quitting any Station (except when detached by Orders from his Commander-in-Chief upon a special Service, accompanied with Orders to return to such Station as soon as the Service has been performed), shall have no Share in Prizes taken by the Ships and Vessels remaining on the Station after he has passed the Limits thereof.

In like manner Flag Officers remaining on such Station shall not share in the Prizes taken by such inferior Officer, or by Ships or Vessels under his immediate Command, after he has quitted the Limits of the Station, except he has been detached as aforesaid.

A Commander-in-Chief or other Flag Officer belonging to any Station shall not share in any Prize or Prizes taken out of the Limits of that Station by any Ship or Vessel under the Command of a Flag Officer of any other Station, or under Orders from Our Commissioners of the Admiralty, unless such Commander-in-Chief or Flag Officer is expressly authorised by Our said Commissioners to take the Command of that Station in which the Prize or Prizes is or are taken, and shall actually have taken upon him such Command.

Every Commodore having a Captain under him shall be esteemed a Flag Officer with respect to the Thirtieth Part of Prizes taken, whether he be commanding in chief or serving under Command.

The First Captain to the Admiral and Commander-in-Chief of Our Fleet, and also the First Captain to any Flag Officer appointed to command a Fleet of Ten Ships of the Line or upwards, shall be deemed to be a Flag Officer for the Purpose of sharing in Prize, and shall be entitled to share therein as the Junior Flag Officer of such Fleet.

Any Officer on board any of Our Ships of War at the Time of capturing any Prize or Prizes who shall have more Commissions than One shall be entitled only to share in such Prize or Prizes according to the Share allotted to him by the above-mentioned Distribution in respect to his superior Commission or Office.

And with reference to these Regulations it is to be noted, that a Captain, Commander, or other Commanding Officer of a Ship or Vessel shall be deemed to be under the Command of a Flag when he shall actually have received some Order from, or be acting in

the Execution of some Order issued by, a Flag Officer, whether he be or be not within the Limits of the Station of such Flag Officer; and in the event of his being directed to join a Flag Officer on any Station, he shall be deemed to be under the Command of such Flag Officer from the Time when he arrives within the Limits of the Station, which Circumstance is always to be carefully noted in the Log Book; and it shall be considered that he continues under the Flag Officer of such Station until he shall have received some Order directly from, or be acting in the Execution of some Order issued by, some other Flag Officer, duly authorised, or by the Lord High Admiral, or Our Commissioners for executing the Office of Lord High Admiral.

And We hereby direct, That the Captain, Commander, Lieutenant commanding, Staff Commander commanding, Master commanding, or any other Officer duly commanding any Ship, Sloop, or Vessel of War, singly making a Capture or Seizure, or otherwise entitled to the distributive Benefit arising from any Proceeds, Reward, Grant, Bounty, Salvage, or other Award as aforesaid, that is to say, the Officer actually in command at the Time shall have One Tenth of the Remainder, or if there is no Flag, One Tenth of the entire net Proceeds, except that if the single capturing Ship be a rated Ship having a Commander under the Captain the Commander shall take a Portion of the One Tenth Part as if he were Commander of a Sloop according to the Proportion hereinafter set forth; and if more than One Commanding Officer of the same Rank of Command shall be entitled to share as joint Captors, &c., the One Tenth shall be equally divided between them; but when Captains, Commanders, Lieutenants commanding, Staff Commanders commanding, and Masters commanding, respectively, Our Ships and Vessels of War, and Commanders under Captains in rated Ships, shall share together in whatever Variety of Combination, the One Tenth shall be so divided into Parts for a graduated Apportionment as to provide for each Captain receiving Six Parts; each Commander of a Sloop, or Commander under the Captain in a rated Ship, Three Parts; and each Lieutenant commanding, Staff Commander commanding, or Master commanding, or other Officer actually commanding a small Vessel of War, Two Parts; which We hereby direct shall be the Proportion in which they shall respectively share; Commodores of the Second Class, and Field Officers of Marines or of Land Forces serving as Marines, doing Duty as Field Officers, above the Rank of Major, to share as Captains; and Field Officers of Marines or of Land Forces serving as Marines, and doing Duty in the Rank of Major, to share as Commanders of Sloops. And We further direct, That after Provision shall thus have been made for the Flag Share (if any), and for the Portion of the Commanding Officer or Officers and others as above specified, the Remainder of the net Proceeds shall be distributed in Ten Classes, so that each Officer, Man, and Boy composing the rest of the Complements of Our Ships, Sloops, and Vessels of War, and actually on board at the Time of any such Capture, Seizure, &c. as aforesaid, and every Person present and assisting, shall receive Shares, or a Share, according to his Class, as set forth in the following Scale:—

- First Class :** Inspector General or Deputy Inspector General of Hospitals and Fleets, when embarked with a Fleet, Inspector of Steam Machinery afloat, when embarked with a Fleet, Staff Captain, Secretary to Admiral of the Fleet or Commander-in-Chief, Paymaster-in-Chief, in the event of such Officer being employed afloat, Forty-five Shares each.
- Second Class :** Senior Lieutenant of a rated Ship, not bearing a Commander under the Captain, Staff Commander, Staff Surgeon, Paymaster over Fifteen Years Seniority, Chief Engineer over Fifteen Years Seniority, Secretary to an Admiral or to a Commodore First Class not commanding in chief, Thirty-five Shares each.
- Third Class :** Sea Lieutenant, Master, Captain of Marines, of Marine Artillery, or of Land Forces doing Duty as Marines, whether having higher Brevet Ranks or not, Surgeon, Secretary to Commodore Second Class, Paymaster under Fifteen Years Seniority, Chief Engineer under Fifteen Years Seniority, Chaplain, Thirty Shares each.
- Fourth Class :** Lieutenant or Quartermaster of Marines, Lieutenant of Marine Artillery, Lieutenant, Quartermaster, or Ensign of Land Forces doing Duty as Marines, Naval Instructor, Sub-Lieutenant, Chief Gunner, Chief Boatswain, Chief Carpenter, Assistant Surgeon, Second Master, Assistant Paymaster in charge, Assistant Paymaster, Engineer, Assistant Engineer, Gunner, Boatswain, Carpenter, Twenty Shares each.
- Fifth Class :** Midshipman, Master's Assistant, Pilot, Clerk, Master-at-Arms, Chief Gunner's Mate, Chief Boatswain's Mate, Chief Captain of the Forecastle, Admiral's Coxswain, Chief Quartermaster, Chief Yeoman of the Signals, Chief Carpenter's Mate, Naval Schoolmaster, Chief Stoker, Ship's Steward, Ship's Cook, Chief Bandmaster, and all Chief Petty Officers, Twelve Shares each.
- Sixth Class :** Naval Cadet, Assistant Clerk, Ship's Corporal, Gunner's Mate, Boatswain's Mate, Captain's Coxswain, Captain of the Forecastle, Quartermaster, Yeoman of the Signals, Coxswain of the Launch, Captain of the Main Top, Captain of the Fore Top, Captain of the Afterguard, Captain of the Hold, Sailmaker, Ropemaker, Carpenter's Mate, Caulker, Blacksmith, Armourer, Plumber, Painter First Class, Leading Stoker, Sick Berth Steward, Bandmaster, Head Krooman in rated Ships, and all First Class Petty Officers, Serjeant of Marines, of Marine Artillery, or of Land Forces doing Duty as Marines, Ten Shares each.
- Seventh Class :** Coxswain of the Barge, Coxswain of the Pin-nace, Captain of the Mast, Second Captain of the Forecastle, Second Captain of the Main Top, Second Captain of the Fore Top, Signalman, Second Captain of the Afterguard, Captain of the Mizen Top, Sailmaker's Mate, Coxswain of the Cutter, Cooper, Caulker's Mate, Painter Second Class, Sick Berth Attendant, Musician, Head Krooman in Ships below Sixth Rates, and all Second Class Petty Officers, Leading Seaman, Corporal of Marines or of Land Forces

doing Duty as Marines, Bombardier of Marine Artillery, Seven Shares each.

Eighth Class: Shipwright, Stoker, and Coal Trimmer, Yeoman of Store Rooms, Second Captain of the Hold, Sailmaker's Crew, Blacksmith's Crew, Tinsmith, Armourer's Crew, Carpenter's Crew, Stoker Second Class, Cooper's Crew, Able Seaman, Bandsman, Tailor, Shoe-maker, Butcher, Second Head Krooman, Lamp Trimmer, Flag Officer's Steward, Cook and Domestic, Captain's Steward and Captain's Cook in all Rated Ships, Ward Room Steward and Ward Room Cook in First, Second, Third, and Fourth Rates, and all First Class Domestics, Ship's Steward's Assistant, Ordinary Seaman, Private and Fifer of Marines or of Land Forces doing Duty as Marines, Drummer and Bugler, Gunner of Marine Artillery, Four Shares each.

Ninth Class: Captain's Steward and Captain's Cook in Vessels below Sixth Rates, Ward Room Steward and Ward Room Cook in Vessels below Fourth Rates, Gun Room Steward, Gun Room Cook, Assistant Sick Berth Attendant, Engineer's Cook, Engineer's Servant, Captain's Servant, Commander's Servant, Secretary's Servant, Warrant Officer's Cook, Cook's Mate, Barber, Second Class Ordinary Seaman, Captain's Cook's Assistant, Ward Room Servant, Ward Room Cook's Assistant, Ward Room Officer's Servant, Gun Room Servant, Warrant Officer's Servant, and all Second and Third Class Domestics, Kroomen, Supernumeraries, except as hereinafter provided, Persons borne merely as Passengers, and not declining to render Assistance on any Occasion of Capture, Seizure, &c., Two Shares each.

Tenth Class: Ship's Stewards Boy, Boys First and Second Class, One Share each.

All Supernumeraries holding Ranks in the Service above the Ranks or Ratings specified in the Fifth Class of this Our Proclamation who have been ordered to do Duty in any of Our Ships and Vessels by the Lord High Admiral, by Our Commissioners for executing the Office of Lord High Admiral, by the Senior Officer of the Fleet or Squadron, or if none senior then by the Captain or Commanding Officer of the capturing Ship or Vessel, if not by special Authority employed in higher Capacities, shall share according to the Ranks which they respectively hold in the Service; but in all Cases, to qualify them for so sharing, and not merely as Supernumeraries in the Ninth Class, due Notation of their being thus respectively ordered to do Duty must be made on the Victualling Lists and Prize Lists.

And with respect to Supernumeraries of Ratings in the Service below the Denominations of those specified in the Fourth Class of this Our Proclamation, and who at full Victuals are engaged in the ordinary Duties of the Ship, it is Our Will and Pleasure that they shall always share according to the Ratings which they bear in the Service.

And in order that Our Royal Intentions herein may be duly carried into effect, We further direct that when any Capture or Seizure

is made, or Service performed for which a distributable Grant or Reward is to be made, or is expected to be conferred or awarded to any of Our Ships or Vessels of War, the Captain or Commanding Officer shall transmit or cause to be transmitted, as soon as may be, to the Secretary of the Admiralty, a true and perfect List of all the Officers, Seamen, Marines, Soldiers, and others who were actually on board on the Occasion, with a Notation thereon, stating whether any other of Her Majesty's Ships or Vessels was in sight at the Time of the Capture, accompanied by a separate List containing the Names of those belonging to the Crew who were absent on Duty or otherwise at the Time, specifying the Cause of such Absence; each List to contain the Quality of the Service of each Person, with their several Ratings, to be subscribed by the Captain or Commanding Officer, and Three or more of the Chief Officers on board.

And when the List of those actually on board, with the separate List of Persons absent, though belonging to the Ship or Vessel, shall have been verified on Examination with the Ship's Books lodged as Official Records, the Accountant General of Our Navy shall grant a Certificate that such Lists are correct or have been corrected, as Occasion may require, in order that Distribution of the respective Prize or other Proceeds payable as Prize or Salvage Money may be duly made in the Department of the Accountant-General of Our Navy.

And in the event of Difficulty arising with respect to any of the Regulations hereby ordered, or if any Case should occur not herein provided for, or not sufficiently provided for, We are pleased hereby to authorise the Lord High Admiral, or Our Commissioners for executing the Office of Lord High Admiral for the Time being, to issue such Directions thereupon as may appear just and expedient; which Directions shall have the same Force and Effect as if specially provided for in this Our Royal Proclamation: Provided always, and the Distribution hereinbefore ordered shall take effect only with respect to the Proceeds of Captures, Seizures, and Services as aforesaid, which shall be made and performed on and after the First Day of *October* One thousand eight hundred and sixty-six; and that the Proceeds arising from all Captures, Seizures, and Services as aforesaid, made or performed prior to that Date, shall be distributed in accordance with any Proclamation or Proclamations now in force or in force at the Time of such Captures, Seizures, or Services respectively and applicable thereto, which We are pleased hereby to direct accordingly.

Given at Our Court at *Windsor*, this Nineteenth Day of *May* in the Year of our Lord One thousand eight hundred and sixty-six, and in the Twenty-ninth Year of Our Reign.

God save the Queen.

IV. TREATY OF PARIS, APRIL 16, 1856.

Declaration respecting Maritime Law, signed by the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, assembled in Congress at Paris, April 16, 1856.

LES Plénipotentiaires qui ont signé le Traité de Paris du trente Mars, mil huit cent cinquante-six, réunis en Conférence,—

Considérant :

Que le droit maritime, en temps de guerre, a été pendant longtemps l'objet de contestations regrettables;

Que l'incertitude du droit et des devoirs en pareille matière donne lieu, entre les neutres et les belligérants, à des divergences d'opinion qui peuvent faire naître des difficultés sérieuses et même des conflits;

Qu'il y a avantage, par conséquent, à établir une doctrine uniforme sur un point aussi important;

Que les Plénipotentiaires assemblés au Congrès de Paris ne sauraient mieux répondre aux intentions dont leurs Gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard;

Dûment autorisés, les susdits Plénipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce but; et étant tombés d'accord ont arrêté la Déclaration solennelle ci-après :—

1. La course est et demeure abolie;
2. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre;
3. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi;
4. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire, maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Les Gouvernements des Plénipotentiaires soussignés s'engagent à porter cette Déclaration à la connaissance des Etats qui n'ont pas été appelés à participer au Congrès de Paris, et à les inviter à y accéder.

Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les Plénipotentiaires soussignés ne doutent pas que les efforts de leurs Gouvernements pour en généraliser l'adoption ne soient couronnés d'un plein succès.

La présente Déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

Fait à Paris, le seize Avril, mil huit cent cinquante-six.

(Signé) BUOL-SCHAUENSTEIN.
HUBNER.
WALEWSKI.
BOURQUENEY.
CLARENDON.
COWLEY.
MANTEUFFEL.
HATZFELDT.
ORLOFF.
BRUNNOW.
CAVOUR.
DE VILLAMARINA.
AALI.
MEHEMMED DJEMIL.

(TRANSLATION.)

The Plenipotentiaries who signed the Treaty of Paris of the thirtieth of March, one thousand eight hundred and fifty-six, assembled in Conference,—

Considering :

That maritime law, in time of war, has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect;

The above-mentioned Plenipotentiaries, being duly authorised, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn Declaration :—

1. Privateering is, and remains, abolished ;
2. The neutral flag covers enemy's goods, with the exception of contraband of war ;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag ;
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

Done at Paris, the sixteenth of April, one thousand eight hundred and fifty-six.

(Signed) BUOL-SCHAUENSTEIN.
HUBNER.
WALEWSKI.
BOURQUENEY.
CLARENDON.
COWLEY.
MANTEUFFEL.
HATZFELDT.
ORLOFF.
BRUNNOW.
CAVOUR.
DE VILLAMARINA.
AALI.
MEHEMMED DJEMIL.

(TRANSLATION.)

Protocol No. 24.—Sitting of April 16, 1856.

On the proposition of Count Walewski, and recognising that it is for the general interest to maintain the indivisibility of the four principles mentioned in the Declaration signed this day, the Plenipotentiaries agree that the Powers which shall have signed it, or which shall have acceded to it, cannot hereafter enter into any arrangement in regard to the application of the right of neutrals in time of war, which does not, at the same time, rest on the four principles which are the object of the said Declaration.

Upon an observation made by the Plenipotentiaries of Russia, the Congress admits, that as the present resolution cannot have any retroactive effect, it cannot invalidate antecedent Conventions.

*V. Declaration of Her Majesty, dated March 28, 1854,
with reference to Neutrals and Letters of Marque.**

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an Ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of Neutrals from all unnecessary obstruction, Her Majesty is willing for the present, to waive a part of the belligerent rights appertaining to her by the Law of Nations.

It is impossible for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing Neutrals from bearing the Enemy's despatches, and she must maintain the right of a belligerent to prevent Neutrals from breaking any effective blockade which may be established with an adequate force against the Enemy's forts, harbours, or coasts.

But Her Majesty will waive the right of seizing Enemy's property laden on board a neutral vessel, unless it be contraband of war.

It is not Her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board Enemy's ships; and Her Majesty further declares, that being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organised forces of the country, it is not her present intention to issue Letters of Marque for the commissioning of Privateers.

Westminster, March 28, 1854.

*VI. Order in Council of April 15, 1854, in furtherance of
Her Majesty's Declaration of the 28th March 1854, re-
specting the Trade of Neutrals and British Subjects.*

AT THE COURT AT WINDSOR,

The 15th Day of April 1854,

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.*

WHEREAS Her Majesty was graciously pleased on the twenty-eighth day of March last, to issue Her Royal Declaration in the following terms:—

“Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in sup-

* The above Declaration and Order in Council ceased to be in force upon the close of the Russian War. They are here inserted only as indicating the probable policy of Great Britain in future wars.

port of an Ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

“To preserve the commerce of Neutrals from all unnecessary obstruction, Her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the Law of Nations.

“It is impossible for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing Neutrals from bearing the Enemy’s despatches, and she must maintain the right of a belligerent to prevent Neutrals from breaking any effective blockade which may be established with an adequate force against the Enemy’s forts, harbours, or coasts.

“But Her Majesty will waive the right of seizing Enemy’s property laden on board a neutral vessel unless it be contraband of war.

“It is not Her Majesty’s intention to claim the confiscation of neutral property, not being contraband of war, found on board Enemy’s ships; and Her Majesty further declares, that being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organised forces of the country, it is not her present intention to issue Letters of Marque for the commissioning of Privateers.”

Now it is this day ordered, by and with the advice of Her Privy Council, that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in Her Majesty’s dominions all goods and merchandise whatsoever, to whomsoever the same may belong; and to export from any port or place in Her Majesty’s dominions to any port not blockaded any cargo or goods, not being contraband of war, or not requiring a special permission, to whomsoever the same may belong.

And Her Majesty is further pleased, by and with the advice of Her Privy Council, to order, and it is hereby further ordered, that, save and except only as aforesaid, all the subjects of Her Majesty and the subjects or citizens of any neutral or friendly State shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places wheresoever situate which shall not be in a state of blockade, save and except that no British vessel shall under any circumstances whatsoever, either under or by virtue of this Order or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in possession or occupation of Her Majesty’s Enemies.

And the Right Honourable the Lords Commissioners of Her Majesty’s Treasury, the Lords Commissioners of the Admiralty, the Lord Warden of the Cinque Ports, and Her Majesty’s Principal Secretary of State for War and the Colonies, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

VII. *Convention* between Her Majesty and the Emperor of the French, relative to joint Captures. Signed at London, May 10, 1854.*

[Ratifications exchanged in London, May 20, 1854.];

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, being desirous to determine the jurisdiction to which the adjudication of joint Captures which may be made during the course of the present war by the naval forces of the two nations, shall belong, or of Captures which may be made of merchant vessels belonging to subjects of either of the two countries by the cruisers of the other, and being desirous to regulate at the same time the mode of distribution of the proceeds of joint Captures, have named as their Plenipotentiaries for that purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's most honourable Privy Council, Knight of the most noble Order of the Garter, Knight Grand Cross of the most honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs;

And His Majesty the Emperor of the French, the Sieur Alexander Colonna, Count Walewski, Grand Officer of the Imperial Order of the Legion of Honour, Grand Cross of the Order of St. Januarius of the Two Sicilies, Grand Cross of the Order of Danebrog of Denmark, Grand Cross of the Order of Merit of St. Joseph of Tuscany, &c. &c., his Ambassador to Her Britannic Majesty;

Who, after having exchanged their full powers, found in due form, have agreed upon the following Articles:

ART. I. When a joint capture shall be made by the naval forces of the two countries, the adjudication thereof shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

ART. II. When a capture shall be made by a cruiser of either of the two allied nations in the presence and in the sight of a cruiser of the other, such cruiser having thus contributed to the intimidation of the enemy, and the encouragement of the captor, the adjudication thereof shall belong to the jurisdiction of the actual captor.

ART. III. In case of the capture of a merchant vessel of one of the two countries, the adjudication of such capture shall always

* This Convention ceased to be in force upon the close of the Russian War. It is here inserted only as exhibiting the kind of arrangement likely to be made between Great Britain and her Maritime Allies in the event of a war.

belong to the jurisdiction of the country of the captured vessel: the cargo shall be dealt with, as to the jurisdiction, in the same manner as the vessel.

ART. IV. In case of condemnation under the circumstances described in the preceding Articles:

1. If the capture shall have been made by vessels of the two nations whilst acting in conjunction, the net proceeds of the prize, after deducting the necessary expenses, shall be divided into as many shares as there were men on board the capturing vessels, without reference to rank, and the shares belonging to the men on board the vessels of the Ally shall be paid and delivered to such person as may be duly authorised on behalf of the allied Government to receive the same; and the distribution of the amount belonging to each vessel shall be made by each Government according to the laws and regulations of the country.

2. If the capture shall have been made by cruisers of either of the two allied nations in the presence and in sight of a cruiser of the other, the division, the payment, and the distribution of the net proceeds of the prize, after deducting the necessary expenses, shall likewise be made in the manner above mentioned.

3. If a capture, made by a cruiser of one of the two countries, shall have been adjudicated by the Courts of the other, the net proceeds of the prize, after deducting the necessary expenses, shall be made over in the same manner to the Government of the captor, to be distributed according to its laws and regulations.

ART. V. The commanders of the vessels of war of their Majesties shall, with regard to the sending in and delivering up of prizes, conform to the instructions annexed to the present Convention, and which the two Governments reserve to themselves to modify by common consent, if it should become necessary.

ART. VI. When, in execution of the present Convention, the valuation of a captured vessel of war shall be in question, the calculation shall be according to the real value of the same; and the allied Government shall be entitled to delegate one or more competent officers to concur in the valuation. In case of disagreement, it shall be decided by lot which officer shall have the casting voice.

ART. VII. The crews of the captured vessels shall be dealt with according to the laws and regulations of the country to which the present Convention attributes the adjudication of the prize.

ART. VIII. The present Convention shall be ratified, and the ratifications shall be exchanged in London within ten days from this date, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seals of their arms.

Done at London, the tenth day of the month of May, in the year of our Lord One thousand eight hundred and fifty-four.

L. S.

CLARENDON.
A. WALEWSKI.

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*Annex to the Convention between Great Britain and France,
signed at London, May 10, 1854.*

*Instructions to the Commanders of Ships of War belonging to Her
Majesty the Queen of the United Kingdom of Great Britain and
Ireland, and to His Majesty the Emperor of the French.*

You will find enclosed a copy of a Convention which was signed on the 10th instant between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French, regulating the jurisdiction to which shall belong the adjudication of the joint captures made by the allied naval forces, or of the captures of merchant vessels belonging to the subjects of either of the two countries which shall be made by the cruisers of the other, as likewise the mode of distribution of the proceeds of such joint captures.

In order to insure the execution of this Convention, you will conform yourself to the following instructions:

ART. I. Whenever, in consequence of a joint action, you are required to draw up the report or *procès-verbal* of a capture, you will take care to specify exactly the names of the ships of war present during the action, as well as the names of their commanding officers, and, as far as possible, the number of men embarked on board those ships at the commencement of the action, without distinction of rank.

You will deliver a copy of that report or *procès-verbal* to the officer of the allied Power who shall have had the superior command during the action, and you will conform yourself to the instructions of that officer as far as relates to the measures to be taken for the conduct and the adjudication of the joint captures so made under his command.

If the action has been commanded by an officer of your nation, you will conform yourself to the regulations of your own country, and you will confine yourself to handing over to the highest officer in rank of the allied Power who was present during the action, a certified copy of the report or of the *procès-verbal* which you shall have drawn up.

ART. II. When you shall have effected a capture in presence of, and in sight of, an allied ship of war, you will mention exactly, in the report which you will draw up when the capture is a ship of war, and in the report or *procès-verbal* of the capture when the prize is a merchant vessel, the number of men on board your ship at the commencement of the action, without distinction of rank, as well as the name of the allied ship of war which happened to be in sight, and, if possible, the number of men embarked on board that ship, likewise without distinction of rank. You will deliver a certified copy of your report or *procès-verbal* to the commander of that ship.

ART. III. Whenever in the case of a violation of a blockade, of the transport of contraband articles, of land or sea troops of the enemy, or of official despatches from or for the enemy, you find

yourself under the necessity of stopping and seizing a merchant vessel of the allied nation, you will take care to :

1. Draw up a report (or *procès-verbal*), stating the place, the date, and the motive of the arrest, the name of the vessel, that of the captain, the number of the crew ; and containing besides an exact description of the state of the vessel, and of her cargo.

2. Collect and place in a sealed packet, after having made an inventory of them, all the ship's papers, such as registers, passports, charter-parties, bills of lading, invoices, and other documents calculated to prove the nature and the ownership of the vessel and of her cargo.

3. Place seals upon the hatches.

4. Place on board an officer, with such number of men as you may deem advisable, to take charge of the vessel, and to insure its safe conduct.

5. Send the vessel to the nearest port belonging to the Power whose flag it carried.

6. Deliver up the vessel to the authorities of the port to which you shall have taken her, together with a duplicate of the report (or *procès-verbal*), and of the inventory above mentioned, and with the sealed packet containing the ship's papers.

ART. IV. The officer who conducts the captured vessel will procure a receipt proving his having delivered up the vessel, as well as his having delivered the sealed packet, and the duplicate of the report (or *procès-verbal*) and of the inventory above mentioned.

ART. V. In case of distress, if the captured vessel is not in a fit state to continue its voyage, the officer charged to conduct to a port of the allied Power a prize made on the merchant service of that Power, may enter a port of his own country or a neutral port ; and he will deliver his prize to the local authority, if he enters a port of his own country, and to the Consul of the allied nation if he enters a neutral port, without prejudice to the ulterior measures to be taken for the adjudication of the prize. He will take care, in that case, that the report or *procès-verbal*, and the inventory which he shall have drawn up, as well as the sealed packet containing the ship's papers, be sent exactly to the proper court of adjudication.

ART. VI. You are not to consider as prisoners of war, and you will give free permission to land, to all women, children, and persons not belonging to the military or maritime profession who shall be found on board the captured vessels.

With this exception, and those which your own security may suggest, you will not permit any person to be removed from on board the vessel ; and in all cases you will retain the master, supercargo, and others whose evidence may be essential to the adjudication of the prize.

You will treat as prisoners of war all persons whatever who may be found on board the Enemy's vessels, with the exceptions above mentioned in § 1.

You will place no other restriction on the liberty of allied or neutral subjects found on board allied or neutral vessels, than such as may be necessary for the security of the vessel.

With respect to your own countrymen, you will treat them ac-

according to the general instructions you have received, and you will in no case deliver them up to a foreign jurisdiction.

The persons who may have been exceptionally removed from the captured vessels shall afterwards be sent back to their own country, if they belong to the allied nation; if they are neutrals or enemies they shall be treated as if they had been found on board vessels captured by you separately.

L. S.

CLARENDON.
A. WALEWSKI.

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